No. 2877

6

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

H. H. RIDDELL,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

TRANSCRIPT OF RECORD

Upon Writ of Error to the District Court of the United States for the District of Oregon.

GLASS & PRUDHOMME CO., PORTLAND, OREGON 128583

No._____

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United States Circuit Court of Appeals for the Ninth Circuit.

H. H. RIDDELL,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Names and Addresses of the Attorneys of Record:

MR. E. B. DUFUR, Abington Building, Portland, Oregon; GILTNER & SEWELL, Yeon Building, Portland, Oregon; MR. WALLACE McCAMANT, Northwestern National Bank Building, Portland, Oregon, for the Plaintiff in Error.

MR. CLARENCE L. REAMES, United States Attorney, Post Office Building, Portland, Oregon, for the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon,—ss.

To the United States of America and to C. L. Reames,
United States Attorney for the District of Oregon,

Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein H. H. Riddell is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 19th day of September in the year of our Lord, one thousand, nine hundred and sixteen.

CHAS. E. WOLVERTON,
Judge.

Service of the within citation is admitted this 19th day of September, 1916.

CLARENCE L. REAMES,
United States Attorney.

Filed September 19, 1916.

G. H. MARSH, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

H. H. Riddell,

Plaintiff in Error,

vs.

The United States of America,

Defendant in Error.

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America.

To the Judge of the District Court of the United States for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between the United States of America, plaintiff and defendant in error, and H. H. Riddell, defendant and plaintiff in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United

States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States this 19th day of September, 1916.

(Seal)

G. H. MARSH,

Clerk of the District Court of the United States for the District of Oregon.

Service of the foregoing Writ of Error made this 19th day of September, 1916, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court a duly certified copy of said Writ of Error.

G. H. MARSH,

Clerk, United States District Court, District of Oregon.

Filed September 29, 1916.

G. H. MARSH,

Clerk, United States District Court, District of Oregon.

In the District Court of the United States for the District of Oregon.

MARCH TERM, 1914.

BE IT REMEMBERED, That on the 23rd day of May, 1914, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment, in words and figures as follows, to-wit:

INDICTMENT.

In the District Court of the United States for the District of Oregon.

United States of America,

vs.

H. H. Riddell,

Defendant.

INDICTMENT for the Violation of Sections 213-215 of the Federal Penal Code.

United States of America,
District of Oregon,—ss.

The Grand Jurors of the United States of America for the District of Oregon, duly empaneled, sworn and charged to inquire within and for the said District, upon their oaths and affirmations do find, charge, allege and present:

That H. H. Riddell, the above named defendant, together with one J. T. Conway and one Frank Richet, his associates, having devised and intending to devise a scheme and artifice to defraud one Mrs. Patsy Doran and divers other persons to this grand jury unknown,

and to obtain from them and each of them money and property by means of false, fraudulent and misleading pretenses, representations, inducements and promises, which said scheme and artifice to defraud is hereinafter more specifically set forth and described, the said H. H. Riddell, the above named defendant, did knowingly, unlawfully and feloniously, on, to-wit, the 12th day of July, 1911, at Portland in said State and District, and within the jurisdiction of this Court, place and cause to be placed in the postoffice and station of the United States Postoffice establishment at Portland, Oregon, and in the mails thereof and of the United States, for the purpose of furthering and executing the said scheme and artifice to defraud, and attempting so to do, and for mailing and delivery, a certain letter enclosed in an envelope with postage fully prepaid thereon and addressed to A. H. Brobst, Vancouver, Wash., and which said letter was and is of the tenor and effect in substance as follows, to-wit:

"OREGON INLAND DEVELOPMENT COMPANY
Incorporated
1121-1122-1123 Yeon Building
Address all communications to The Company.
Phone Main 133.

Frank Richet,
President, Treasurer.
J. T. Conway,
Vice Pres. & Gen'l Mgr.
H. H. Riddell,
Secretary.

July, 12, 1911.

A. H. Brobst,

Vancouver, Wash.

Dear Sir:

Your letter of July 10 is received enclosing application for contract bearing date of July 7, signed by your son. I note you state that you hope we can handle this contract from Mr. Hillias for your son and afterwards exchange it for Tract 9 or 11 in Plat 104. Mr. Conway is now at La Grande. He is expected back within a couple of days, and on his return will answer your letter more fully.

Very truly yours,

OREGON INLAND DEVELOPMENT COMPANY."

H.H.H. FY.

and which said scheme and artifice so to defraud then and there being in and by the following means, methods, plans and modes, that is to say:

That the said defendant, H. H. Riddell, together with the said J. T. Conway and Frank Richet, his said associates, acting personally and as officers of the Oregon Inland Development Company, a corporation organized under the laws of the State of Oregon, would falsely and fraudulently pretend, represent, promise and hold out to the said Mrs. Patsy Doran and the said divers other persons to the grand jury unknown and to the public generally, that the said Oregon Inland Development Company was the owner of forty thousand (40,000) acres of farm lands in the State of Oregon,

and that the said defendant and his said associates and the said Oregon Inland Development Company (hereinafter referred to and designated as the Company) intended to and would subdivide the said 40,000 acres of land into 3,086 farms of the following numbers and sizes, to-wit: 2,712 farms of 10 acres each—200 farms of 20 acres each—150 farms of 40 acres each—20 farms of 80 acres each—2 farms of 160 acres each—1 farm of 320 acres and one farm of 640 acres; and the said defendant and his said associates, acting as aforesaid, would further falsely and fraudulently pretend and represent, promise and hold out that the said company was the owner of 3,086 town lots in the townsite at Klamath Falls, Oregon, the county seat of Klamath County; and that the said defendant and his said associates and the said company would sell one farm and one of said lots for the sum of $240.00, payable ten dollars down and ten dollars per month until the full sum of $240.00 should have been paid; and further, that the said 40,000 acres of land so by said company owned, was and is farm and fruit land of high quality, situated in Sections 16 and 36 and located in the following named counties in the State of Oregon, to-wit: Baker, Crook, Curry, Douglas, Grant, Harney, Jackson, Klamath, Lake, Linn, Lincoln, Malheur, Sherman, Union, Umatilla, Wallowa, Wasco and Wheeler; and further, that the said 40,000 acres of land so by said company owned, were choice farm lands covered with sagebrush and timber, and the said defendant and his said associates acting as aforesaid, did further falsely and fraudulently represent, promise, pretend and hold out to the said Mrs.

Patsy Doran and to the said divers other persons and to the public generally, that in many cases the lands adjoining and contiguous to lands pretended by the said defendant and his said associates to be owned by the said company, were then being farmed and planted in orchards, and that the said lands so pretended to be owned by said company were also fruit and orchard lands; and the said defendant and his said associates acting as aforesaid, did further falsely and fraudulently represent, promise, pretend and hold out to the said Mrs. Patsy Doran and to said divers other persons and to the public generally, that the said company was the owner in fee simple of the said 40,000 acres of farm land and of the said 3,086 town lots in Klamath Falls, and that the title of said company thereto was perfect and that any persons purchasing the contracts offered for sale by said defendants and the said company, would receive good and sufficient title to said lands from the said company; and the said defendant, acting with his said associates, did further falsely and fraudulently represent, promise, pretend and hold out to each and all of the persons hereinbefore mentioned and to the public generally, that deeds to the said 40,000 acres of farm lands which vested title to said lands in said company, had been theretofore executed by John Veasen and Lulu Veasen, husband and wife, under date of April 25, 1910; and further that the said scheme and artifice so to defraud, was to be further executed, carried out and effected by the said defendant and his said associates and the said company increasing the price to be paid by the purchasers of the said contracts of sale of said company,

from $240.00 to $300.00 each; and by falsely and fraudulently issuing, circulating, printing and distributing a certain illustrated booklet entitled "Grande Ronde District, Oregon," which said booklet, among other things, contained a purported and pretended map and chart of Union, Wallowa and portions of Baker counties, Oregon, and which said map of said counties had large portions thereof identified in red colors, and the said defendant and his associates acting as aforesaid, would and did further falsely and fraudulently pretend, represent, promise and hold out to the persons aforesaid and to the public generally, that each of said townships so on said map identified and outlined in red, contained 10 and 20 acre tracts and farms owned by the said company; and did further falsely and fraudulently represent, pretend, promise and hold out to the persons aforesaid and to the public generally, that the most careful care had been exercised by the said defendant and his said associates acting as aforesaid in the selection of the said 10 acre tracts owned and for sale by the said company, and that the lands so claimed and represented to be owned by the said company in the counties of Union, Wallowa and Baker aforesaid, were and are neither mountainous nor swamp lands; and further, that the said defendant and his said associates, acting as aforesaid, did falsely and fraudulently pretend, represent, promise and hold out to the persons aforesaid, that the said town lots so represented by them and by the said company to be owned by it, were at and a part of and contiguous and adjacent to the town and City of Klamath Falls, Oregon, and that each thereof was alone worth

the amount of the selling price of the contracts of said company, when in truth and in fact and as he the said defendant then and there well knew, the said lands and lots so by defendant and his associates and said company pretended to be owned and claimed by said company at Klamath Falls, Oregon, were and are not at, in and a part of or contiguous or adjacent to the city and town of Klamath Falls, Oregon, but were and are situated and located at a place of not less than a mile and a half distant from the nearest portion of the said town and city of Klamath Falls and not less than two miles from the business portion of said city and town, and then and there were and now are, as he the said defendant at all times well knew, not of the value and amount at which the contracts of said company were sold, and were and are of little or no value whatsoever.

And further, that the said defendant and his said associates, in the execution and furtherance and as a part and portion of the said scheme and artifice to defraud, would and did have and cause to be printed, published, circulated, mailed and generally distributed, large numbers of a certain poster, which said poster had written across it in bold red ink, "Grande Ronde District, Oregon," and which said poster had delineated upon it, numerous half tone reproductions of photographs named, labeled and described by the following designations, to-wit: "Native Hay Scene on Our Land Near Promise," "Scene on our land in Baker County, Note the Deep Soil on Creek Bank," "Trout Stream Crossing One Corner of our 20 Acre Tract Southeast of Elgin," "Scene on Our Land West of La Grande," "Part of

Our Land Near Enterprise," "Part of our Land Near North Powder," "Part of Our Land in Baker County, Showing Creek," "Scene on One of Our 40 Acre Tracts Near Imbler," "Part of Our Land Near La Grande, Note the Gentle Slope," and which said statements, labels, legends and delineations were false, fraudulent, misleading and untrue in every particular, as he the said defendant then and there well knew, and when in truth and in fact as the said defendant than and there well knew, the said company did not own or have any lands in either Baker or Wallowa County, Oregon, and when in truth and in fact and as the said defendant then and there well knew, the cut and reproduction labeled "Native Hay Scene on our Land Near Promise," was not a reproduction of a scene on any land owned by said company; and when in truth and in fact and as the said defendant well knew, the said company had and owned no lands near Promise; and when in truth and in fact the said cut and reproduction labeled and designated "Part of Our Land Near Enterprise," was false, fraudulent and untrue, in that the said company did not own or have any lands near Enterprise, Oregon; and when in truth and in fact and as the said defendant then and there well knew, the said cut labeled and designated "Part of Our Land Near North Powder," was false, fraudulent, misleading and untrue in this, that the said company did not and does not have or own any land near North Powder, Oregon; and when in truth and in fact and as he the said defendant then and there well knew, the said cut and reproduction on said poster labeled and designated "Part of Our Land in Baker County Show-

ing Creek," was false, fraudulent, misleading and untrue in that the said company did not and does not own any land in Baker County, Oregon, and the photograph there so reproduced as aforesaid, was not taken on and did not delineate or show any portion of any lands owned by said company in Baker County, Oregon, or elsewhere; and when in truth and in fact and as he the said defendant then and there well knew, the said cut and reproduction on said poster labeled and designated "Scene on One of Our 40 Acre Tracts Southeast of Imbler," was and is false, fraudulent, misleading and untrue in that the said defendant then and there well knew that the said photograph so reproduced on said poster, was not a photograph or delineation of or taken on any land owned by the said company southeast of Imbler or elsewhere or at all; and when in truth and in fact and as he the said defendant then and there well knew, the said cut and reproduction on said poster labeled and designated "Part of Our Land Near La Grande, Note the Gentle Slope," was false, fraudulent and misleading in this that the said company did not and does not own any land near La Grande, Oregon, and that the said photograph so reproduced, was not taken on and did not portray a part of any lands owned by the said company near La Grande nor at all; and when in truth and in fact and as he, the said defendant then and there well knew, the said cut and reproduction on said poster labeled "Scene on Our Land West of La Grande," was and is false, fraudulent, misleading and untrue in this, that the said company did not and does not own any land west of La Grande, and the photo-

graph so reproduced on the said poster and so labeled and designated, was not taken on and did not portray a scene of any land owned by the said company west of La Grande or at all; and when in truth and in fact and as the said defendant then and there well knew, the said cut and reproduction on the said poster labeled "Trout Stream Crossing One Corner of Our 20 Acre Tract Southeast of Elgin," was and is false, fraudulent and misleading and untrue in this, that the said photograph so reproduced on said poster did not and does not portray any trout or other stream crossing a corner of any one of the 20 acre tracts owned by the said company southeast of Elgin or at all, but did and does portray a portion of the Grande Ronde River a few miles distant from Rondowa, Oregon, and many miles distant from any land whatsoever owned by said company; and when in truth and in fact and as he the said defendant than and there well knew, the said cut and reproduction on said poster labeled "Scene on Our Land in Baker County, Note the Deep Soil on Creek Bank," was false, fraudulent and misleading and untrue in this, that the said company did not and does not own any land in Baker County, Oregon, and the said photograph and reproduction so on said poster labeled and designated, does not and did not portray a scene on any lands owned by the said company in Baker County or elsewhere or at all. And when in truth and in fact and as he, the said defendant then and there well knew, the said company was not the owner of 40,000 acres of farm land in the State of Oregon, nor was the said company nor the said defendant nor his said associates the owner

or owners of 3,086 town lots in the townsite of Klamath Falls, Oregon, and when in truth and in fact and as he the said defendant then and there well knew, the said 40,000 acres of land so claimed to be owned by said company, was not and is not farm or fruit land of high quality, but were and are high, bleak, cold, rocky, non-arable, non-tillable, scab and mountainous lands, fit only for use as grazing lands and totally unfit for orchard culture and cultivation; and when in truth and in fact and as he, the said defendant than and there well knew, the said 40,000 acres of lands so claimed to be owned by the said company, were and are not orchard lands or capable of being farmed, and it was not and is not true and the said defendant then and there well knew that the lands adjoining and contiguous to the said lands so pretended to be owned by the said company, were and are not in many instances or at all, capable of being farmed or planted in orchards; and when in truth and in fact and as he, the said defendant then and there well knew, the said defendants was not and is not the owner in fee simple or at all of the said 40,000 acres of farm lands or the said 3,086 town lots; and when in truth and in fact and as he the said defendant then and there well knew, the deeds so claimed to be executed by John Veasen and Lulu Veasen, did not vest title to the lands therein described in the said company, for the reason that the said deeds were to be placed in escrow and were never delivered to the said company or to any representative thereof; and when in truth and in fact and as he the said defendant then and there well knew, it was not and is not true that each of the townships designated

in red on that certain map in that certain illustrated booklet entitled "Grande Ronde District, Oregon," contained and contains 10 and 20 acre tracts owned by the said company, but in truth and in fact, the said company owned and owns no lands in either Baker or Wallowa counties, Oregon, and owned lands in but six of the said townships so designated in red; and when in truth and in fact and as the said defendant then and there well knew, the said 10 and 20 acre tracts advertised for sale in and by the said circular and pamphlet entitled "Grande Ronde District, Oregon," were not and are not orchard lands of high grade and quality, but were and are high, bleak, rough, rocky, frosty, non-arable, non-tillable and inaccessible mountainous lands, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT THREE:

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That the said H. H. Riddell, together with one J. T. Conway and one Frank Richet, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of the false and fraudulent representations, pretenses and promises set out in the first count of this indictment, to which reference is hereby made, and by which reference the said description of said scheme and artifice so to defraud is hereby made a part of this Count Three of this indict-

ment, the said H. H. Riddell the above named defendant, at Portland aforesaid and within the jurisdiction of this Court, on to-wit, the 26th day of June, 1911, and for the purpose of furthering and executing said scheme and artifice to defraud, and attempting so to do, did knowingly, unlawfully and feloniously place and cause to be placed in a postoffice of the United States of America, to-wit, the postoffice at Portland aforesaid, for mailing and delivery in and by the mails of the United States, a letter inclosed in an envelope with postage fully prepaid thereon, addressed to W. C. Hayward, Manilla, Iowa, and which said letter was and is of the tenor and effect as follows, to-wit:

OREGON INLAND DEVELOPMENT COMPANY

Incorporated

1121-1122-1123 Yeon Building

Address all communications to The Company.

Phone Main 133

Frank Richet,
President-Treasurer.
J. T. Conway,
Pres, & Gen'l Mgr.
H. H. Riddell,
Secretary.

Portland, Oregon, 6/26/11.

W. C. Hayward,
Manilla, Iowa.

Dear Sir:

The sale of our contracts on the auction plan will close in the very near future. We are placing

on the market and have sold several ten acre tracts, which we are selling on terms of $10 down and $10 per month without interest or taxes. The purchase price being $300 per tract. There is no town lot in connection with this new proposition. It is a straight purchase of a specified ten acre tract. We have decided to permit a number of our present contract holders on the auction plan to select one of these ten acre tracts in lieu of their present contracts; crediting them with the amount they have previously paid together with discount, if any, to apply on the purchase of a ten acre tract. In addition to this, they will receive a town lot at Klamath Falls when the same is alloted as per their original contract.

In addition to these $300 tracts we have some higher priced lands that are selling at $400 and $500 per tract. We will also upon request, accept transfer of the present contracts to apply on these higher priced lands. Contract holders may at their pleasure select a representative at their own expense and send him to La Grande from which point we would take him to make inspection and selection —for his people. We cannot, however, hold a large body of this land off the market unless some action is taken immediately. We herewith enclose plats of 32 ten acre tracts. We are writing our representative in Iowa, M. Hillias, 505 W. Broadway, Council Bluffs, Ia., and would suggest that you work in conjunction with him in as much as it would prevent two people selecting the same tract. He

can arrange for you to have your acreage adjoining that of a neighbor if you and they so desire. We wish to urge upon you the necessity of immediate action in as much as that if you fail to take advantage of this offer at this time, and decide later that you wish a specified ten acre tract, it will of course necessarily be located farther out than our present offerings, and we cannot at this time agree to transfer your contract if you do not make immediate application. Call and see Mr. Hillias at once and oblige.

Yours very truly,

OREGON INLAND DEVELOPMENT COMPANY

J. T. Conway,

Vice-Pres. & Gen. Mgr.

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT FOUR:

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

That the said H. H. Riddell, together with one J. T. Conway and one Frank Richet, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent representations pretenses and promises set out in the first count of this indictment, to which reference is hereby made, and by which reference the said

description of said scheme and artifice so to defraud is hereby made a part of this Count Four of this indictment, the said H. H. Riddell, the above named defendant, at Portland aforesaid, and within the jurisdiction of this Court, on to-wit, on or about June 9, 1911, and for the purpose of furthering and executing said scheme and artifice to defraud, and attempting so to do, did knowingly, unlawfully and feloniously place and cause to be placed in a postoffice of the United States of America, to-wit, the postoffice at Portland aforesaid, for mailing and delivery in and by the mails of the United States, a certificate enclosed in an envelope with postage fully prepaid thereon, addressed to a person or persons and address to this grand jury unknown, and which said certificate was and is of the tenor and effect as follows, to-wit:

"$300.00 No. 557

OREGON INLAND DEVELOPMENT CO.

Clearance Receipt.

Portland, Oregon, June 9, 1911.

THIS CERTIFIES that E. H. Bryant, of Gallup, New Mexico, has made application for one of the three thousand and eighty-six (3,086) tracts and one of the three thousand and eighty-six (3,086) lots, in an adition at Klamath Falls, Oregon, and has made full payment of the sum of Three Hundred ($300.00) Dollars, the purchase price thereof, and is thereby entitled to a deed to one tract and one lot, according to the contract of purchase, free and clear of encumbrances, as soon as

said tract and lot is segregated and apportioned to him, and in accordance with all the rights and benefits contained in the terms and conditions in his application to purchase said tract and lot and such deeds will be executed and delivered at that time to him or his assigns and after registration of this receipt by the Northern Trust Company, Portland, Oregon.

IN WITNESS WHEREOF, the said Oregon Inland Development Co., a corporation organized and existing under and by virtue of the laws of the State of Oregon, has caused this receipt to be executed by its President and Secretary and its corporate seal attached hereto at City of Portland, Oregon, on this 9th day of June, 1911.

OREGON INLAND DEVELOPMENT CO.,
By F. Richet, President.

Attest: H. H. Riddell, Secretary.

(OREGON INLAND DEVELOPMENT COMPANY. Corporate SEAL 1909)

(NORTHERN TRUST CO. Portland, Oregon. Incorported 1909 SEAL)

THIS IS TO CERTIFY that the foregoing Clearance Receipt No. 557 is one of a series of Three Thousand Eighty-six (3,086) issued by the above named Oregon Inland Development Co., and the undersigned Registrar will not register more

than the said Three Thousand Eighty-six (3,086) Clearance Receipts.

NORTHERN TRUST CO., REGISTRAR,
By Jeremiah Miller, President."

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT FIVE:

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge allege and present:

That the said H. H. Riddell, together with one J. T. Conway and one Frank Richet, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of the false and fraudulent representations, pretenses and promises set out in the first count of this indictment, to which reference is hereby made, and by which reference the description in said count of said scheme and artifice so to defraud is hereby made a part of this Count Five of this indictment, the said H. H. Riddell, the above named defendant, at Portland aforesaid, and within the jurisdiction of this Court, on to-wit, the 29th day of May, 1911, and for the purpose of furthering and executing said scheme and artifice to defraud, and attempting so to do, did knowingly, unlawfully and feloniously place and cause to be placed in a post office of the United States of America, to-wit, the postoffice at Portland aforesaid, for mailing and delivery in and by the mails

of the United States, a certificate and writing enclosed in an envelope, with postage fully prepaid thereon, addressed to J. K. Hartline, Albuquerque, New Mexico, and which said certificate was and is of the tenor and effect as follows, to-wit:

"$300.00 No. 554

OREGON INLAND DEVELOPMENT CO.

Clearance Receipt.

Portland, Oregon, May 29, 1911.

THIS CERTIFIES that J. K. Hartline, of Albuquerque, New Mexico, has made application for one of the three thousand and eighty-six (3,086) tracts and one of the three thousand and eighty-six (3,086) lots, in an addition at Klamath Falls, Oregon, and has made full payment of the sum of Three Hundred ($300.00) Dollars, the purchase price thereof, and is thereby entitled to a deed to one tract and one lot, according to the contract of purchase, free and clear of encumbrances, as soon as said tract and lot is segregated and apportioned to him, and in accordance with all the rights and benefits contained in the terms and conditions in his application to purchase said tract and lot and such deeds will be executed and delivered at that time to him or his assigns and after registration of this receipt by the Northern Trust Company, Portland, Oregon.

IN WITNESS WHEREOF, the said Oregon Inland Development Co., a corporation organized

and existing under and by virtue of the laws of the State of Oregon, has caused this receipt to be executed by its President and Secretary and its corporate seal attached hereto at City of Portland, Oregon, on this 29th day of May, 1911.

OREGON INLAND DEVELOPMENT CO.,
By F. Richet, President.

Attest: H. H. Riddell, Secretary.

(OREGON INLAND DEVELOPMENT COMPANY Corporate SEAL 1909)

(NORTHERN TRUST CO. Portland, Oregon. Incorporated 1909 SEAL)

THIS IS TO CERTIFY that the foregoing Clearance Receipt No. 554 is one of a series of Three Thousand Eighty-six (3,086) issued by the above named Oregon Inland Development Co., and the undersigned Registrar will not register more than the said Three Thousand Eighty-six (3,086) Clearance Receipts.

NORTHERN TRUST CO., REGISTRAR,
By Jeremiah Miller, President."

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 21st day of May, 1914.

A TRUE BILL.

M. BILLINGS,
Foreman U. S. Grand Jury.
E. A. JOHNSON,
Assistant U. S. Attorney.

(Endorsed) A True Bill. M. Billings, Foreman Grand Jury.

Filed May 23, 1914.

A. M. CANNON, Clerk.

And afterwards, to-wit, on the 23rd day of November, 1916, there was duly filed in said Court and cause, a Demurrer to the Indictment, in words and figures as follows, to-wit:

DEMURRER TO INDICTMENT.

Now comes the defendant and demurs to the indictment heretofore returned against him and to the several counts thereof for the reasons following:

I.

Defendant demurs to count one of said indictment for the reason that the same is duplicitous and charges the defendant with the commission of more than one offense.

And for the further reason that said count does not state facts sufficient to constitute an offense against the laws of the United States, and does not charge an intention to defraud any one.

II.

Defendant demurs to count two of said indictment for the reason that the same does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that the said count two does not charge defendant with having devised any scheme or artifice to defraud any one, and does not charge any intention to defraud any one.

And for the further reason that said count two is duplicitous.

III.

Defendant demurs to count three of said indictment for the reason that said count three does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that said count three does not charge defendant with having devised any scheme or artifice to defraud any one, and does not charge an intention to defraud any one.

And for the further reason that said count three is duplicitous.

IV.

Defendant demurs to count four of said indictment for the reason that said count four does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that said count four does not charge defendant with having devised any scheme or artifice to defraud any one, and does not charge an intention to defraud any one.

And for the further reason that said count four is duplicitous.

V.

Defendant demurs to count five of said indictment for the reason that said count five does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that said count five does not charge defendant with having devised any scheme or artifice to defraud any one, and does not charge an intention to defraud any one.

And for the further reason that said count five is duplicitous.

VI.

Defendant demurs to count six of said indictment for the reason that said count six does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that said count six does not state facts sufficient to show whether the scheme mentioned in said count was in fact a lottery.

And for the further reason that it does appear from the allegations and recitals of count one of said indict-

ment that an exact description of all the lands and lots mentioned in said count six was known to the Grand Jury.

VII.

Defendant demurs to count seven of said indictment for the reason that said count seven does not state facts sufficient to constitute an offense against the laws of the United States.

And for the further reason that said count seven does not state facts sufficient to show whether the scheme mentioned in said count seven was in fact a lottery.

And for the further reason that it does appear from the recitals in count one of said indictment, that an exact description of all the lots and lands mentioned in said count seven were known to the Grand Jury.

VIII.

Defendant demurs to said indictment and to the whole thereof for the reason that said indictment does not state facts sufficient to constitute an offense against the laws of the United States.

GILTNER & SEWALL,
Attorneys for Defendant.

I certify that I have examined the within demurrer and that the same is in my opinion well founded in law.

RUSSELL E. SEWALL,
Attorney for Defendant.

Filed November 23, 1914.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the 14th day of December, 1914, the same being the 37th Judicial day of the regular November, 1914, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ON DEMURRER.

This cause was heard upon the demurrer to the indictment herein, and was argued by Mr. Everett A. Johnson, Assistant United States Attorney, and by Mr. R. R. Giltner, of counsel for said defendant; on consideration whereof, it is Ordered and Adjuged that said demurrer be and the same is hereby overruled except as to the sixth and seventh counts of said indictment and that the demurrer to said sixth and seventh counts be and the same are hereby sustained; whereupon it is Ordered that said defendant appear before this Court and enter his plea to the indictment herein on Monday, December 21, 1914.

And afterwards, to-wit, on Thursday, the 13th day of January, 1916, the same being the 64th Judicial day of the regular November, 1915, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD EMPANELLING JURY.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendant

in his own proper person and by Mr. E. B. Dufur, Mr. William P. Myers, and Mr. Wallace McCamant, of counsel; whereupon this being day set for the trial of this cause, now come the following named jurors to try the issues joined, viz.: John A. Ficke, J. H. Abrey, A. J. Monk, Geo. V. Bishop, W. D. Donahue, J. J. Kenney, G. A. Harth, F. Joplin, E. M. Simonton, Wilson Fike, John Sleret, and Louis F. Hadley, twelve good and lawful men of the district who being accepted by both parties and duly empaneled and sworn proceed to hear the evidence adduced, and the hour of adjournment having arrived, the further trial of this cause is continued until Friday, January 14, 1916, at 10 o'clock A. M.

And afterwards, to-wit, on Wednesday, the 26th day of January, 1916, the same being the 75th Judicial day of the regular November, 1915, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF VERDICT.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendant in his own proper person and by his counsel as of yesterday; whereupon the jury empaneled herein come into Court and present to the Court the following verdict and recommendation, viz.: "We, the jury in the above entitled Court and cause, find the defendant, H. H. Riddell, guilty in manner and form as charged in count three of the indictment; and guilty in manner and form

as charged in count four of the indictment; and guilty in manner and form as charged in count five of the indictment. Dated at Portland, Oregon, this 26th day of January, 1916. E. M. Simonton, Foreman." "We, the undersigned jurors having found the verdict of guilty do hereby request and earnestly petition your honor to extend extreme leniency in the case above mentioned. E. M. Simonton, J. J. Kenney, G. A. Harth, J. G. Sleret, A. J. Monk, J. A. Ficke, Louis F. Hadley, George V. Bishop, J. A. Abrey, Wilson Fike, F. Joplin, W. B. Donahue." Which verdict and recommendation are received by the Court and ordered to be filed; whereupon on motion of said defendant IT IS ORDERED that he be and he is hereby allowed thirty days from this date within which to file a motion for new trial herein and that he be and he is hereby allowed ninety days from this date within which to prepare and submit a bill of exceptions.

And Afterwards, to-wit, on the 26th day of January, 1916, there was duly filed in said Court and cause, a Verdict, in words and figures as follows, to-wit:

VERDICT.

We, the jury in the above entitled Court and cause, find the defendant, H. H. Riddell, guilty in manner and form as charged in count three of the indictment; and

Guilty in manner and form as charged in count four of the indictment; and

Guilty in manner and form as charged in count five of the indictment.

Dated at Portland, Oregon, this 26th day of January, 1916.

E. M. SIMONTON, Foreman.

Filed January 26, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 26th day of January, 1916, there was duly filed in said Court and cause, the Recommendation of the Jury, in words and figures as follows, to-wit:

RECOMMENDATION OF THE JURY.

Hon. Judge Bean,

District Court of the United States,
District of Oregon.

In the case of United States
vs.
H. H. Riddell.

We, the undersigned jurors, having found the verdict of guilty, do hereby request and earnestly petition

your honor to extend extreme leniency in the case above mentioned.

E. M. Simonton
J. J. Kenney
G. A. Harth
J. G. Sleret
A. J. Monk
J. A. Ficke
Louis F. Hadley
George V. Bishop
J. A. Abrey
Wilson Fike
F. Joplin
W. B. Donahue.

And afterwards, to-wit, on Monday, the 20th day of March, 1916, the same being the 13th Judicial day of the regular March, 1916, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

JUDGMENT.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendant in his own proper person and by Mr. Wallace McCamant, of counsel; whereupon said plaintiff moves the Court for judgment upon the verdict of the jury heretofore filed herein:

It is, therefore, considered that said defendant do pay a fine of Two Thousand Five Hundred Dollars ($2500.00), and that he be imprisoned in the county jail of Multnomah County, Oregon, for the term of four months, and it is further ordered that execution of this sentence be and the same hereby is stayed until the time allowed said defendant to file a bill of exceptions in this cause.

And afterwards, to-wit, on the 19th day of September, 1916, there was duly filed in said Court and cause, a Petition for Writ of Error, in words and figures as follows, to-wit:

PETITION FOR WRIT OF ERROR.

Your Petitioner, H. H. Riddell, defendant in the above entitled cause, now comes and brings this his petition as plaintiff in error, for the writ of error to the District Court of the United States for the District of Oregon, and thereupon your petitioner shows:

That on the 20th day of March, 1916, there was rendered and entered in the above entitled cause a judgment in and by said District Court of the United States for the District of Oregon, wherein and whereby your petitioner was sentenced and adjudged to be imprisoned in the county jail of the County of Multnomah, State of Oregon for a period of four months and to pay a fine of $2,500.00.

And your petitioner further shows that he is advised by counsel that there are manifest errors in the

records and proceedings at and in said cause in the rendition of said judgment and sentence to the great damage of your petitioner, said defendant, all of which errors will be made to appear by examination of the said record and more particularly by an examination of the bill of exceptions by your petitioner tendered and filed herein and in the assignments of error filed and tendered herewith.

To the end therefore that the said judgment, sentence and proceedings may be reversed by the United States Circuit Court of Appeals of the Ninth Circuit, your petitioner prays that a writ of error may be issued, directed therefrom to the said District Court of the United States for the District of Oregon, returnable according to law, and the practice of this Court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignments of error and all proceedings had in said cause; that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit to the end that the errors, if any have happened, may be fully corrected, and full and speedy justice done your petitioner.

And your petitioner now makes his assignments of error filed herewith upon which he will rely, and which, will be made to appear by the return of said record in obedience to said writ.

Wherefore, your petitioner prays the issuance of a writ as hereinbefore prayed for, and prays that his assignments of error filed herewith may be considered as his assignments of error upon the writ, and that the

judgment rendered in this cause may be reversed and held for naught and said cause remanded for further proceedings, and also that an order be made fixing the amount of security which the said petitioner shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this Court against the said petitioner be suspended and stayed until the determination of the said writ of error in the said Circuit Court of Appeals.

E. B. DUFUR,
Attorney for Petitioner.

Filed September 19, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 19th day of September, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to-wit:

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error, defendant above named by his counsel, and presents this his assignments of error, containing the assignments of error upon which he will rely in the United States Circuit Court of Appeals for the Ninth Circuit, and specifies the following particulars wherein it is claimed that the District Court erred in the course of the trial of said cause.

1. Error of the Court in overruling the demurrer of plaintiff in error to counts 3, 4 and 5 in the indictment.

2. Error of the Court in overruling the objection of defendant to and receiving in evidence the articles of incorporation of the Oregon Inland Development Company; Complainant's Exhibit No. 1.

3. Error of the Court in overruling the objection of the defendant to and admitting in evidence the record book of the corporation introduced as Complainant's Exhibits 2, 3, 4, 5, 6, 7, 8, 109, 110, 111, 112 and 114.

4. Error of the Court in overruling the objection of the defendant to and receiving in evidence the contract between John Veason and the Oregon Inland Development Company; Complainant's Exhibit 9.

5. Error of the Court in overruling the objection of the defendant to and receiving in evidence the letter of John Veason to the Oregon Inland Development Company af date March 23, 1910; Complainant's Exhibit No. 10.

6. Error of the Court in overruling the objection of the defendant to and admitting in evidence the contract between John Veason and the Oregon Inland Development Company of date April 14, 1910; Complainant's Exhibit No. 11.

7. Error of the Court in overruling the objection of the defendant to and receiving in evidence the pamphlet "The Land of Opportunity;" Complainant's Exhibit No. 12.

8. Error of the Court in overruling the objection of the defendant to the testimony of the witness Ella

O'Gara and in permitting the witness to answer the following question: Question, "The title of it was 'Success.' Now Miss O'Gara where was the literature, this pamphlet entitled 'Success,' where was it kept and in what quantities was it on hand at the time you went to work for them?" Answer: "It was on the counter and tables and floor, stacked all around and we were busy sending it out; that was when Miss McMahon first worked for us; she helped send it out; we first mailed a single copy to each inquirer and then later on there was a great quantity sent and then to agents; it was sent to them by mail and express."

9. The Court erred in overruling the objection of the defendant to and receiving in evidence the pamphlet "Success;" Complainant's Exhibit No. 13.

10. Error of the Court in overruling the objection of the defendant to the testimony of the witness Ella O'Gara wherein she was asked the following question: Question: "What have you to say as to whether or not Riddell knew that was being mailed out in these quantities and in that manner?" And in permitting the witness to answer. Answer: "He knew that we were sending literature out."

11. Error of the Court in overruling the objection of the defendant to and receiving in evidence the cancelled checks and bills; Complainant's Exhibit No. 14.

12. Error of the Court in overruling the objection of the defendant to and receiving in evidence the pamphlet "Progress;" Complainant's Exhibit 15.

13. Error of the Court in overruling the objection of the defendant to the testimony of the witness Ella O'Gara and in permitting the witness to answer the following question: Question: "Are the signatures true and correct representations of the signature of Mr. Riddell?" Answer: "Just like he writes."

14. Error of the Court in overruling the objection of defendant to and receiving in evidence; Complainant's Exhibit 16.

15. Error of the Court in overruling the objection of the defendant to and receiving in evidence the "Map of Oregon;" Complainant's Exhibit 17.

16. Error of the Court in overruling the objection of the defendant to and receiving in evidence the copy of the second issue of Success; Complainant's Exhibit 18.

17. Error of the Court in overruling the objection of the defendant to and receiving in evidence the paper, "Contract No. 516;" Complainant's Exhibit 25.

18. Error of the Court in overruling the objection of the defendant to and receiving in evidence the selling agent's contract of April 25, 1910; Complainant's Exhibit 26.

19. Error of the Court in overruling the objection of the defendant to and receiving in evidence the contract of November 18, 1910; Complainant's Exhibit 27.

20. Error of the Court in overruling the objection of the defendant to and receiving in evidence the publication, "Fruitdale;" Complainant's Exhibit 28.

21. Error of the Court in overruling the objection of the defendant to and receiving in evidence the publication entitled, "Famous Fruits;" Complainant's Exhibit 29; and further, in remarking in the presence and hearing of the jury, "It was gotten out by the general manager of the firm, a man employed by or whom Mr. Riddell assisted in employing according to the contract, and if in the proper scope of the employment I suppose some responsibility attaches to the employer." And further in remarking to the jury: "Mr. Riddell was one of the organizers, Director and Secretary of the concern, signed the contract and put a man in charge to carry out the purposes of the organization, if it was such as the Government claims and I don't think a man can do that and then escape responsibility, even criminal, if the evidence sustains that theory. That is a question for the jury of course."

22. Error of the Court in overruling the objection of the defendant to and receiving in evidence the pamphlet, "Coming to Oregon;" Complainant's Exhibit 30.

23. Error of the Court in overruling the objection of the defendant to and receiving in evidence the booklet entitled, "Grande Ronde District in Oregon;" Complainant's Exhibit 31.

24. Error of the Court in overruling the objection of the defendant to and receiving in evidence the poster; Complainant's Exhibit 32.

25. Error of the Court in overruling the objection of the defendant to and receiving in evidence the receipted bills and checks; Complainant's Exhibit 33.

26. Error of the Court in overruling the objection of the defendant to and receiving in evidence the contract of Mary C. Jackson; Complainant's Exhibit 38, and the contract of Mary C. Jackson; Complainant's Exhibit 39.

27. Error of the Court in overruling the objection of the defendant to and receiving in evidence the contract of H. W. Patton; Complainant's Exhibit 40.

28. Error of the Court in overruling the objection of the defendant to the testimony of the witness Fannie Dean and in permitting the witness to answer the following question: Question: "Now taking up the first one, No. 557, it is in favor of a Mr. E. H. Bryant, of Gallup, New Mexico, and the one 554 is in favor of J. K. Hartline, Alberquerque, New Mexico. Through what agency would that be transmitted to these gentlemen residing in those places?" And further in permitting the witness to answer said question as follows: "These clearance receipts were first prepared by me and then taken to Mr. Richet and Mr. Riddell for their respective signatures; after Mr. Richet had signed them and after Mr. Riddell had signed them they would then be mailed."

29. Error of the Court in overruling the objection of the defendant to the testimony of the witnesses E. W. Donnelly, Henry Ireland, Walter J. Jones, R. S. Shelly, J. E. Gribble, C. S. Congleton, J. W. Schmitz, W. A. Donnelly, G. C. Blake and G. C. Stevenson, wherein they testified that they had examined the lands described in the photographic copies of the deeds set

out in the two issues of "Success;" that said lands were in the high mountains many of them were on the tops of mountain peaks; they were arid, rocky, dry, cut up with gulches and deep ravines containing but a small amount of mechantable timber of poor quality; that on some of the tracts snow lies as late as August; that the lands were nearly all within the boundaries of the National Forests and were all absolutely worthless and unfit for any agricultural or horticultural use whatsoever, and further in receiving in evidence Complainant's Exhibits 21, 22 and 23.

30. Error of the Court in overruling the objection of the defendant to and receiving in evidence the letter of November 22, 1910, to S. I. Renshaw; Complainant's Exhibit No. 45.

31. Error of the Court in overruling the objection of the defendant to the testimony of the witness S. I. Renshaw wherein he testified that he had received a great number of copies of Complainant's Exhibits Nos. 13, 15, 28, 39, 31, 29, 18 and 17 and of the poster, and that he had used all of said literature in advertising the lands of the company and procuring auction contracts for the purpose of making sales.

32. Error of the Court in overruling the objection of the defendant to and receiving in evidence Complainant's Exhibits Nos. 46, 47, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 and the testimony that all these exhibits had been receiving by the several witnesses through the agency of the United States mails.

33. Error of the Court in overruling the objection of the defendant to and receiving in evidence the clearance receipt of J. K. Hartline; Complainant's Exhibit No. 41.

34. Error of the Court in overruling the objection of the defendant to and receiving in evidence the clearance receipt of E. H. Bryant; Complainant's Exhibit No. 42; and further to the testimony of the witness E. H. Bryant that he had received the paper through the mail.

35. Error of the Court in overruling the objection of the defendant to and receiving in evidence Complainant's Exhibit No. 119.

36. Error of the Court in overruling the objection of the defendant to and receiving in evidence Complainant's Exhibit No. 122.

37. Error of the Court in overruling the objection of the defendant to and receiving in evidence, Complainant's Exhibits Nos. 128-A, and 128-B.

38. Error of the Court in giving the jury the following instruction:

> 'If, therefore, you believe from the testimony in this case that there was an unlawful and illegal device or scheme to defraud by means of false and fraudulent representations set out in the indictment entered into between the defendant and Conway and Richet, or either of them, and that said scheme contemplated the use of the United States

mails in its accomplishment, then it can make no difference as far as defendant's guilt is concerned which one of the conspirators mailed the letters charged in the indictment, if they were mailed at all, or whether he knew that they were mailed or whether he had any knowledge of the contents thereof, if in fact they were mailed by one of the conspirators or associates in furtherance of the unlawful scheme or device to defraud to which defendant Riddell was a party and of which he had knowledge.'

39. Error of the Court in giving the jury the following instruction:

'It is enough if, having devised a scheme to defraud, the defendant, with a view to executing it, deposited or caused to be deposited in the post-office, letters or papers which were designed for the purpose of carrying it into effect, although in the judgment of the jury they may be wholly insufficient for that purpose; nor is it necessary for the government to prove the mailing of all of the letters set out in the indictment and to which I have called your attention. It is sufficient if it has satisfied you that one or more of such letters was mailed by the defendant or caused to be mailed by him, and that such letter or document was in fact intended by the parties mailing it in the execution of or to assist in the execution of the alleged unlawful scheme.'

40. Error of the Court in giving the jury the following instruction:

> 'You must, therefore, before you can find the defendant guilty be satisfied beyond a reasonable doubt as I shall attempt to define that term to you hereafter that he devised or assisted to devise such scheme to defraud and that he or his co-conspirators placed or caused to be placed in the postoffice of the United States for mailing and delivery one or more of the three letters or documents mentioned in the indictment, and to which I have called your special attention for the purpose of executing such scheme. The intention of the defendant is the gist of the offense.'

41. Error of the Court in giving the jury the following instruction:

> 'If there was a fraudulent scheme or device entered into by Richet or Conway or either of them for the purpose of obtaining money or property by false or fraudulent representations, and Riddell was a party thereto, with knowledge of its fraudulent character, then under the statute he was guilty as a principal if the mails were subsequently used as charged in the indictment, and in furtherance of such purpose.'

42. Error of the Court in giving the jury the following instruction:

> 'It does not necessarily follow from the fact that a man has a good reputation for honesty and in-

tegrity that he actually possesses these traits of character, and the mere possession of such reputation does not render the person possessing it incapable of committing a crime involving dishonesty and want of integrity. It is within the common knowledge of us all that many persons bearing good reputations have nevertheless been guilty of crime. While the reputation of the defendant for honesty and integrity is for your consideration as a part of the evidence in this case, it is entitled to just the weight, no less and no more, which you, upon a review of all the evidence in the case, and in the exercise of sound judgment, would attach to it, and you should give it such weight as you think it is entitled to under all the circumstances of the case.'

43. Error of the Court in giving the jury the following instruction:

'If you find from the evidence and beyond a reasonable doubt that there was a scheme and artifice to defraud substantially the same as it is set out in the indictment, and that the defendant, H. H. Riddell, was a party thereto, and that it was a part and portion of this scheme and artifice to defraud that the representations contained in the literature of the company were made with the knowledge of the defendant, Riddell, and that these representations were knowingly false, then the intent to injure and to defraud the auction contract holders of the Oregon Inland Development Company, upon the part of the said Riddell, may be by

you presumed; acts which involve such consequences when knowingly and wrongfully committed establish not only a guilty intent to injure and defraud, but they disclose moral turpitude utterly inconsistent with an innocent intent.'

44. Error of the Court in giving the jury the following instruction:

'It is presumed that every sane person intends the natural and ordinary consequences of his own voluntary act. Applying this rule to the case at bar, if you should find from the evidence and beyond a reasonable doubt that the defendant was a party to the scheme and artifice to defraud set out in the indictment, if you should find that there was such scheme or artifice, and that in the execution of said scheme or attempting so to do, he mailed or caused to be mailed the letter set forth in count three of the indictment, or the certificate set forth in count four of the indictment at the time and place designated in the indictment, then you should find the defendant, Riddell, guilty upon said counts.'

45. Error of the Court in refusing to give the jury the following instruction:

'The jury is instructed to find the defendant not guilty of the charge set forth in count three of the indictment.'

46. Error of the Court in refusing to give the jury the following instruction:

'The jury are instructed to find the defendant not guilty of the charge set forth in count four of the indictment.'

47. Error of the Court in refusing to give the jury the following instruction:

'The jury is instructed to find the defendant not guilty of the charge set forth in count five of the indictment.'

48. Error of the Court in refusing to give the jury the following instruction:

'There is no charge in the indictment that a fraud was committed in the manner in which the stock of the Oregon Inland Development Company was treated as paid up. The jury will therefore disregard the contention of the District Attorney that this circumstance was fraudulent.'

49. Error of the Court in refusing to give the jury the following instruction:

'The jury is instructed that the defendant can not be found guilty under the third count in the indictment unless the jury shall find that the defendant, mailed or caused to be mailed, a certain letter of date June 26, 1911, signed Oregon Inland Development Company, J. T. Conway, Vice-President and General Manager, addressed to W. C. Hayward, Manila, Iowa, which letter is set forth in the third count of the indictment.'

50. Error of the Court in refusing to give the jury the following instruction:

> 'The jury is instructed that the defendant can not be found guilty under the fourt count in the indictment unless the jury shall find that the defendant mailed, or caused to be mailed, a certain certificate dated June 9th, 1911, in favor of E. H. Bryant, of Gallup, New Mexico, which certificate is set forth in the fourth count of the indictment.'

51. Error of the Court in refusing to give the jury the following instruction:

> 'The jury is instructed that the defendant can not be found guilty under the fifth count in the indictment, unless the jury shall find that the defendant mailed, or caused to be mailed, a certain certificate of date May 29, 1911, in favor of J. K. Hartline of Alberquerque, New Mexico, which certificate is set forth in the fifth count of the indictment.'

52. Error of the Court in refusing to give the jury the following instruction:

> 'It appears from the Government's proof that prior to May 23rd, 1911, the Oregon Inland Development Company ceased and abandoned its efforts to market the property which has been known in the testimony as the Veason Lands and that all acts looking to the marketing of these properties had ceased more than three years prior to the time when the defendant was indicted. The jury is

therefore instructed to disregard all testimony, if there is any in the record, tending to show any efforts and things done by the defendant looking to the sale of the Veason Lands.'

53. Error of the Court in refusing to give the jury the following instruction:

'It appears from the testimony of the Government that all efforts looking to the marketing of the Veason Lands were abandoned prior to the 23rd day of May, 1911. The jury is therefore instructed that a verdict of guilty cannot be based on evidence of anything done by the defendant looking to the marketing of the Veason Lands.'

54. Error of the Court in refusing to give the jury the following instruction:

'The acts set up in the indictment are charged in the indictment as having been done on certain dates therein set forth. The Government is not confined in its proof to the dates set forth in the indictment, but it is bound under the statute of limitations to prove that the acts of the defendant on which a conviction is asked took place within three years prior to the finding of the indictment. Unless you can find from the evidence beyond a reasonable doubt that subsequent to the 23rd day of May, 1911, the defendant was a party to the fraudulent scheme and device set up in the indictment and that subsequent to that date he took some active step to effectuate the fraud therein

charged and that he mailed one or more of the writings heretofore specified in the charge of the Court subsequent to May 23, 1911, you will find the defendant not guilty.'

55. Error of the Court in refusing to give the jury the following instruction:

'It is by no means unusual for advertisers to exaggerate the merits of those things which they offer for sale and such exaggeration is not criminal unless it is in bad faith. In order to be entitled to a conviction based on the literature circulated by the Oregon Inland Development Company, the Government must show that the defendant caused this literature to be circulated, knowing that the statements contained in it, or some of them, were false in fact, and that he did this with intent to deceive and to induce those receiving the literature to part with their money or property. The Government must further prove that such misrepresentations were material.'

56. Error of the Court in refusing to give the jury the following instruction:

'The future is always a matter of speculation and opinion. The representations therefore which are sufficient to sustain a charge of fraud must relate to something in the past or the present. The jury is therefore instructed to disregard any statements in the literature of the Oregon Inland Development Company as to the future of the prop-

erties offered for sale or as to any future events affecting their value.'

57. Error of the Court in refusing to give the jury the following instruction:

'The value of land is always a matter of opinion and for that reason a statement as to the value of land cannot form the basis of a charge of fraud under the circumstances of this case.'

58. Error of the Court in refusing to give the jury the following instruction:

'If the defendant believed the representations of the Oregon Inland Development Company with reference to the value of its lands to be true, he is entitled to an acquittal.'

59. Error of the Court in refusing to give the jury the following instruction:

'The jury has already been instructed that good faith is an adequate defense against the charge preferred in the indictment and on this branch of the case the jury is entitled to take into consideration the question of whether or not there was any motive moving the defendant to participate in the fraudulent scheme or artifice set forth in the indictment.'

60. Error of the Court in permitting the jury to take with them into the jury room the corporation record book, Complainant's Exhibits, Nos. 2, 3, 4, 5, 6, 7, 8, 109, 111, 112 and 114; and the literature and exhibits

relating solely to the Veason Lands, and particularly the copies of "Success."

Wherefore defendant, plaintiff in error, prays that the above and foregoing Assignments of Error be considered as his Assignments of Error upon the Writ of Error; and further prays that the judgment heretofore rendered in this cause may be reversed and held for naught and that plaintiff in error, defendant above named have such other and further relief as may be in conformity to law and the practice of the Court.

E. B. DUFUR.

Attorney for Defendant and Plaintiff in Error.

Filed September 19, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Tuesday, the 19th day of September, 1916, the same being the 67th judicial day of the regular July, 1916, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

Now at this day, this cause coming on to be heard on the motion of the defendant H. H. Riddell, for a Writ of Error, and it appearing to the Court that a Petition for a Writ of Error, together with Assignments of Error, have been duly filed; it is ordered that a Writ of Error be and is hereby allowed to have reviewed in

the United States Circuit Court of Appeals, Ninth Circuit, the judgment heretofore entered herein, and that the amount of bond on said Writ of Error be and the same is hereby fixed at Two Thousand Five Hundred Dollars, and that execution of sentence be stayed pending the prosecution of said Writ of Error.

CHAS. E. WOLVERTON,
Judge.

Filed September 19, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 20th day of September, 1916, there was duly filed in said Court and cause, a Bond on Writ of Error, in words and figures as follows, to-wit:

BOND ON WRIT OF ERROR.

Know All Men by These Presents: That we, H. H. Riddell, the above named defendant, as principal, and S. T. Lockwood and Eugenia Morse, as sureties, are held and firmly bound unto the United States of America in the penal sum of Two Thousand Five Hundred Dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, administrators, forever, firmly by these presents. Sealed with our seals and dated this 19th day of September, 1916.

Whereas, at the March term, 1916, of the District Court of the United States for the District of Ore-

gon, in a cause therein pending wherein the United States was plaintiff and the said H. H. Riddell was defendant, a judgment was rendered against the defendant on the 20th day of March, 1916, wherein and whereby the said defendant was sentenced to be imprisoned in the County jail of Multnomah County, Oregon, for four months and to pay a fine of $2500.00, and the said defendant has sued for and obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to review the said judgment and sentence in the aforesaid action and a citation directing the United States to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, thirty days from and after the date of said citation, which citation has been duly served.

Now the condition of this obligation is such that if the said H. H. Riddell shall appear either in person, or by attorney in the said Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for a hearing of said cause in said Court and prosecute his Writ of Error and abide by the orders made by said United States Circuit Court of Appeals and shall surrender himself in execution as said Court may direct, if the judgment and sentence against him shall be affirmed, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 19th day of September, 1916.

In the Presence of

H. H. RIDDELL,
S. P. LOCKWOOD,
EUGENIA MORSE.

State of Oregon,
County of Multnomah,—ss.

We, S. P. Lockwood and Eugenia Morse, each being duly sworn, say, that I am a resident and free-holder in the State of Oregon, and that I am worth the sum of $5,000.00 over and above all my just debts and liabilities and exclusive of property exempt from execution.

S. P. LOCKWOOD,
EUGENIA MORSE.

Subscribed and sworn to before me this 19th day of September, 1916.

(Seal) E. B. DUFUR,
Notary Public for Oregon.

My commission expires January 15, 1917.

Approved this 20th day of September, 1916.

CHAS. E. WOLVERTON,
Judge.

Filed September 20, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 19th day of September, 1916, there was duly filed in said Court and cause, a Bill of Exceptions, in words and figures as follows, to-wit:

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above entitled cause came on for trial in the District Court of the

United States for the District of Oregon on January 13, 1916, before the Honorable R. S. Bean, Judge, and a jury impaneled to try the cause, the Government appearing by Clarence L. Reames, United States Attorney, and the defendant appearing in person and by Wallace McCamant and E. B. Dufur, his counsel.

Whereupon, the opening statements having been made by counsel to the jury, the following proceedings were thereupon had:

The Government, to substantiate the issues on its part, offered in evidence a certified copy of the Articles of Incorporation of the Oregon Inland Development Company, and a certified copy of the Certificate of Incorporation of said company.

MR. McCAMANT: We object to the paper, may it please your Honor, on the ground that it appears these papers were executed on the 13th day of November, 1909, and filed the same date. The indictment was found on the 23d day of May, 1914, and the statute of limitations has therefore run in favor of the defendant as to anything which would be predicated on the making of the Articles of Incorporation in 1909.

COURT: The Government has a right to go back of the statute of limitations in developing the case, but of course must bring it within the three years of limitation and must confine the testimony to matters arising within three years.

MR. McCAMANT: Save an exception, and may my objection be considered as going to anything the Government offers prior to the 23d day of May, 1911?

COURT: Yes, if based upon the ground that it is covered by the statute of limitations.

MR. McCAMANT: Yes. I will of course offer any other objections, and I may be considered, of course, to have an exception to the court's rulings as against that objection.

Complainant's Exhibit 1, Articles of Incorporation, read to the jury."

Whereupon, J. H. Upton, an attorney at law, called as a witness on behalf of the Government, testified that he was acquainted with the defendant Riddell during the years 1909, 1910 and 1911. He identified the corporation record book as the minute book of the Oregon Inland Development Company, which showed the records of the meetings of the stockholders and the Board of Directors. At the organization of the company the record was kept by the witness. The minutes of the first meeting and the By-Laws, the first meeting of the stockholders and the By-Laws of the company were put into the book by the witness, who was the attorney for the company at the time of its organization.

"MR. REAMES: Will the defense require further proof?

MR. McCAMANT: We admit, Mr. Reames, that everything in that book is a corporate record of a cor-

porate action. We admit that that book is the book which, at the inception of the corporation, was used for corporate purposes.

MR. REAMES: Well, then may it be introduced with the understanding that either party may read from such portions of it as desired from time to time during the course of the trial, and that these entries as they are read will be subject to any parol explanation that either side desires to make?"

Whereupon the following pages of the minute book of the corporation were admitted by the defendant to be either in the hand writing of the defendant or to have been prepared and signed by him, and these pages were then by the Government offered in evidence. To the introduction of these pages of the minute book the defendant objected as not connecting the defendant with the crime charged in the indictment, and for the further reason that more than three years had elapsed prior to the finding of the indictment, and as incompetent, irrelevant and immaterial. The objection was overruled and the defendant duly excepted to the ruling. Whereupon the said respective pages of the minute book were received in evidence and marked as follows:

Page 1, as Complainant's Exhibit Two.
Page 3, as Complainant's Exhibit Two.
Page 4, as Complainant's Exhibit Two.
Page 5, as Complainant's Exhibit Three.

Pages 5, 6, 7 and 8, as Complainant's Exhibit Three.

Page 9, as Complainant's Exhibit Four.

Pages 11, 12 and 13, as Complainant's Exhibit Five.

Pages 14 and 15, as Complainant's Exhibit Six.

Pages 16, 17, 18 and 19, as complainant's Exhibit Seven.

Pages 21 and 23, as Complainant's Exhibit Eight.

Page 24, as Complainant's Exhibit One Hundred Nine.

Page 25, as Complainant's Exhibit One Hundred Ten.

Page 26, as Complainant's Exhibit One Hundred Eleven.

Page 27, as Complainant's Exhibit One Hundred Twelve.

Pages 27 and 28, as Complainant's Exhibit One Hundred Twelve.

Page 32, as Complainant's Exhibit One Hundred Thirteen.

Pages 33, 34, 35 and 36, as Complainant's Exhibit One Hundred Fourteen.

The witness was one of the first directors, and the first treasurer of the corporation.

A contract between the Oregon Inland Development Company and John Veasen was identified by the witness and its execution proved by him. The Government offered the contract in evidence.

The defendant objected to the contract for the reason that more than three years had elapsed prior to the finding of the indictment and after the contract had been terminated and the sale of the Veasen lands discontinued. The objection was overruled. To the ruling the defendant duly excepted and the exception was allowed. The contract was then received in evidence and read to the jury and marked as Complainant's Exhibit Nine. This is a contract of date November 24, 1909, signed by John Veasen, and by the Oregon Inland Development Company, by F. Richet, President, and H. H. Riddell, Secretary, and witnessed by J. H. Upton and W. Markillie.

The witness further testified that the first page of the minute book, constituting the subscriptions to the capital stock, showed the correct name of the subscriber and the subscription to the stock that had been made, and that the subscriptions were shown in the original handwriting of the different subscribers.

Upon cross examination, the witness testified that the relation he and Mr. Riddell sustained to the undertaking was the relation of lawyers organizing a corporation, who took their pay in stock instead of in money; that during the time the witness was familiar with the affairs of the corporation, Riddell did not exercise any executory authority over the acts of the company, but that Mr. Richet and Mr. Conway were the managers of the company, and that Mr. Riddell took part at the meetings of the directors, and in that way, of course he did,

but not to any other extent within the knowledge of the witness; that Mr. Richet and Mr. Conway ran the company and were the executive officers of the company; that the witness was not familiar with the affairs of the company, or Riddell's connection therewith, subsequent to March 9, 1910; that up to the time Mr. Conway came in, on March 9, 1910, it had not transacted very much business.

W. Markillie, a witness called on behalf of the Government, testified that he had lived in Portland for twenty years, and that during that period of time was in the real estate business; that he was acquainted with John Veasen and that John Veasen was now dead. The witness identified Complainant's Exhibit Nine, and also identified an instrument bearing date March 23, 1910, addressed to the Oregon Inland Development Company, and stated that it was a letter written by John Veasen to the company, which cancelled the former contract.

Whereupon the Government offered the letter in evidence, to the introduction of which the defendant objected upon the ground that the defendant was not connected with the instrument in any way. The objection was overruled and the defendant asked and was allowed an exception, the Government stating at the time of the offer that it would show that thereafter a new contract was entered into by the Oregon Inland Development Company with John Veasen and that the second contract was signed by the defendant as an officer of the company for the same identical tracts of land. The

document was received in evidence and marked as Complainant's Exhibit Ten.

The witness identified an instrument bearing date April 14, 1910, and proved that it had been executed by Mr. Veasen, by Mr. Richet and by Mr. Riddell, in the presence of the witness.

Whereupon the contract was offered in evidence, to which the defendant objected upon the ground that it was incompetent, irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The document was received in evidence and marked as Complainant's Exhibit Eleven.

The witness identified a pamphlet entitled "The Land of Opportunity," examined it and stated that it was a pamphlet used by the company in the exploitation of the Veasen lands; that before the pamphlet was circulated it was submitted to Mr. Riddell and to Mr. Upton, and that after it had been so submitted it was used and circulated in the exploiting of the Veasen lands by the company. Mr. Riddell and Mr. Upton passed upon it, but Mr. Byrne, one of the other promoters, was the man who decided that it was to be sent out.

Thereupon the publication "Land of Opportunity" was offered in evidence. The defendant objected for the reason that it related only to the Veasen lands, and that the contract for their sale had terminated and the sale thereof had stopped more than three years prior to the finding of the indict-

ment, and that the publication did not connect the defendant with the crime charged in the indictment. The objection was overruled, the defendant excepted and the exception was allowed. The paper was then received in evidence and marked as Complainant's Exhibit Twelve.

Upon cross examination the witness testified that when Complainant's Exhibit Twelve had been exhibited to Mr. Riddell, that it was simply exhibited to him as the attorney for the company and that in the opinion of the witness Riddell knew nothing concerning the Veasen lands except what information he got from either Veasen or the witness; that Riddell sustained to the company the relations of an advisory lawyer and that was all; however, at the time Complainant's Exhibit Twelve was submitted to Riddell, Riddell said that these lands were not cultivated and that Webster's definition of a farm would convey the idea that it was plowed land, and that they were no farms anyway; that they were tracts; that they couldn't be advertised for farms; that from his knowledge of the condition of the lands, it would be better to advertise them as tracts because they were not farms; that Riddell objected to the circulation of the literature with the word "farm" in it, and as he was the attorney for the company, this was subsequently changed; that is, the word "farm" was changed to the word "tract"; that all Mr. Riddell objected to in the literature was the use of the word "farm," and that the witness knew of no other objection that he made; that Mr. Riddell had the literature in his hands for some time and that after perusal some corrections were made, but

that the chief correction was to change the word "farm" to the word "tract."

Graham Dukhert, Assistant Cashier of the Lumbermens National Bank, testified that in the years 1909 and 1910 he handled all of the escrows for the bank; that during these years a great number of deeds were deposited with him by John Veasen. They were not accepted by the bank as escrows and were afterwards taken away from the bank by John Veasen. The witness did not know Riddell and Riddell did not contract any business with the bank on behalf of the corporation or John Veasen.

Ella O'Gara, an experienced stenographer and bookkeeper, testified that she began to work as a stenographer and bookkeeper for the Oregon Inland Development Company in the latter part of April, 1910; that the officers of the company were Frank Richet, President, H. H. Riddell, Secretary, Jay Upton, Treasurer, and J. T. Conway, General Manager. The offices of the company were located in the Chamber of Commerce Building, at Portland, Oregon, at the time she first went to work for the company, and during that time the law office of the defendant was in the same building. The witness did all the stenographic and bookkeeping work for the company during the time she was employed by it, with the exception that another stenographer was upon one occasion hired for two days. The volume of business transacted by the company in relation to the mailing and the receiving of letters, and the receipt of money, was large and there were a great many inquiries

which came to the office of the company relative to the sale of its lands. "The first day I went to work for the company Mr. Conway read to me the names of the officers of the company and told me with whom I would have dealings. The next day I saw Mr. Riddell and Mr. Upton. They were in the office of the company for several days. They were in and out a great deal. At the time I first went to work for the company, they were sending out a circular through the United States mails —a publication entitled "Success."

Q. The title of it was "Success." Now, Miss O'Gara, where was the literature, this pamphlet entitled "Success"—where was it kept and in what quantity was it on hand at the time you went to work for them?

Mr. McCamant: I object to that. They can't convict a man on a criminal charge on the assumption that he saw literature because of the fact that it was lying around in observation in the office. They can't charge him with responsibility on that character of testimony.

COURT: I don't know what the testimony will lead up to. It is a preliminary question as I understand it.

Mr. McCamant: Save an exception.

A. It was on the counter and tables, floor, stacked all around, and we were busy sending it out. That is when Miss McMahon first worked for us. She helped send it out."

"We first mailed a single copy to each inquirer and then later on there was a great quantity sent, and then

to agents it was sent both by mail and express. There were approximately between four and five thousand copies of this publication in the office, on the table, upon the counter and upon the floor. Mr. Riddell was in the office of the Oregon Inland Development Company during that period of time sometimes every day, sometimes not for several days; sometimes he would be in twice a day, and then maybe not again for a week. Mr. Riddell saw us mailing the copy of the publication entitled "Success" and saw us addressing it and sending it through the mails."

Whereupon the Government offered in evidence the first publication of "Success."

Mr. McCamant: We object to it on the ground that it is a departure from the allegations of the pleadings; no contention made in the pleadings Mr. Riddell mailed this, nor is there any evidence that he mailed it; it is immaterial for that reason. He can't be charged with responsibility for it even though the evidence might justify an inference that he knew about it.

COURT: There are two things that the government must prove in this case: First, that there was a scheme to defraud. That is the preliminary question. And second, that the mails of the United States were used in furtherance of such scheme. The indictment alleges a particular scheme and this is evidence bearing upon that question.

Mr. Reames: That is the purpose for which it is offered.

Mr. McCamant: Then your Honor does not rule that they can establish the use of the mails by defendant except on the five charges.

COURT: These are all matters they have charged in the indictment and that they will have to prove. They will have to prove first there was a scheme to defraud, and second that the mails were used as alleged in the indictment in furtherance of such scheme.

Mr. McCamant: So that this is admitted only as to the first branch of the government's case, and your Honor does not rule at this time at any rate that it can introduce as to the second branch of their case anything except the five pieces of mail referred to in the indictment.

COURT: No.

Mr. McCamant: Save an exception.

Pamphlet "Success" marked Complainant's Exhibit Thirteen, and read to the jury."

"Q. Subsequent to this piece of advertising literature, to whom were all of the rest of the advertising literature submitted of the Oregon Inland Development Company, until say the month of October, 1910? To whom was it submitted before it went out through the mails?

A. Well, I believe they began sending it out through the mail right away, and then as Riddell would come in they would show it to him.

Q. Who would show it to him?

A. Mr. Conway as a rule."

The witness then identified a publication entitled "Progress" as a piece of the advertising literature of the Oregon Inland Development Company, and which had been by the company sent out to the people through the mails. The witness then identified cancelled check No. 60, of date July 30, 1910, drawn upon the Merchants National Bank in favor of the Holly Press for $130.00, the defendant admitting that the check was signed by H. H. Riddell, Secretary, and by F. Richet, Treasurer, and that it was paid by the bank in the ordinary course of business. The witness identified two receipted bills attached to the check, one in the amount of $30.00 and the other in the amount of $100.00, as being receipted bills for the issue of "Progress," and testified that the check was drawn and issued in payment of the bill for said publication; that every one of the contract holders received through the mail a copy of "Progress," and that a copy was mailed to every person who inquired, or any prospect who would come. These copies were generally sent through the mails, but were forwarded to the agents by express.

"Q. What have you to say as to whether or not Riddell knew that that was being mailed out in these quantities and in that manner?

Mr. McCamant: I object on the ground that knowledge is immaterial. They have to show that defendant caused matters to be mailed. He can't be convicted criminally on knowledge of what is going on.

COURT: As I said this morning, this is attempting to prove the fraudulent scheme.

A. He knew that we were sending literature out.

Mr. McCamant: Save an exception.

Whereupon the Government offered in evidence the cancelled check and the two receipted bills, to the introduction of which the defendant objected on the ground that it was incompetent, irrelevant and immaterial. The objection was overruled and an exception was allowed. Whereupon the cancelled checks and the two receipted bills were received in evidence and marked as Complainant's Exhibit Fourteen.

Whereupon the Government offered in evidence the copy of the publication identified by the witness and entitled "Progress"; the defendant objected on the ground that it was incompetent, irrelevant and immaterial, and that it does not show any connection of the defendant with any conspiracy, the testimony of the witness being that these papers were prepared by somebody else and started to be mailed and after that shown to the defendant; the objection was overruled and an exception was allowed; whereupon the publication was received in evidence and marked as Complainant's Exhibit Fifteen.

Whereupon the witness was shown the original of a letter, of date May 14, 1910, written upon the stationery of the Oregon Inland Development Company, addressed to Riley L. Walcott, at Winslow, Arizona, signed with

the stamped signature of H. H. Riddell, as Secretary of the Oregon Inland Development Company. She was also shown fifty other copies of this form letter, all of which were exactly the same with the exception of the date and the name and the address of the addressee. The first of these was dated May 14, 1910, and the last December 23, 1910. The witness identified these as circular letters that she had sent out in acknowledgment of the first payment when a contract holder would buy a new contract. Concerning this form letter, the witness testified:

"This is a mimeograph letter, a circular made all ready, so all we had to do was to fill in the amounts and the date. We filled in the name and the address, the date and the amounts, and then it was ready to mail. Upon this form, the total payment to be paid was $150.00. From the time I went to work for the Oregon Inland Development Company up until October, 1910, this was the method by which the receipt of the first payment was acknowledged and information given as to when the next payment would fall due. Mr. Riddell sat behind me several times and watched me filling these forms in so he naturally knew they would be mailed. The signature to the form letter is the stamped signature of Mr. Riddell.

Q. Well, are the signatures true and correct representations of the signature of Mr. Riddell?

A. Just like he writes.

Mr. McCamant: I object to that. The question should be whether he authorized the use of the stamp or other device. I move to strike out the answer.

COURT: Objection overruled. I don't think a man can assume the duties of the office of secretary and allow the literature to go out with his name signed to it without some inference being drawn against him. I don't know just what. It is at least for the jury to pass upon.

Exception saved.

During the time these receipts were being sent out Mr. Riddell knew that that receipt was being sent out over his signature. It was sent out through the United States mails and was mailed in the Postoffice at Portland, Oregon.

Mr. Reames: Government now offers in evidence but one of these forms. I don't care to put the whole fifty-one in, and I will say at the time of making the offer, that we will supplement that later in the trial by proof that several of them, of this identical form, were actually received by people who purchased applications, and received at their postoffice addresses through the medium of United States mail. It is offered simply for the purpose of proving a fraud and proving scheme and artifice to defraud and to connect the defendant therewith.

Mr. McCamant: I object, as incompetent, irrelevant and immaterial. There is nothing in the letter itself which involves any artifice to defraud. It is not one of the letters described in the indictment, and the question of its mailing is therefore wholly immaterial; and it appears that they were sent out by some one else and all

that has been proved or attempted to be proved is knowledge by the defendant and nothing casual on his part.

Objection overruled, exception saved.

Marked Complainant's Exhibit Sixteen, and read."

The witness thereupon identified a piece of literature entitled "Map of the State of Oregon" as a part of the advertising literature of the Oregon Inland Development Company, and testified that she had mailed it out to nearly every contract holder up until October, 1910; that this piece of literature was sent out in large quantities, purchased in large amounts and sent out to every prospective contract holder; that Mr. Riddell knew they were sending out this piece of advertising literature.

Whereupon the Government offered in evidence the publication entitled "Map of the State of Oregon," to which the defendant objected upon the ground that it was irrelevant and immaterial, and on the ground that there is no evidence to show that the defendant caused it to be sent out. The objection was overruled and an exception was asked and allowed. The publication was then received in evidence and marked as Complainant's Exhibit Seventeen.

Whereupon the witness identified a piece of advertising literature as the second issue of "Success," issued, printed and mailed by the Oregon Inland Development Company after the witness had gone to work for the company. She also identified a check signed by the Oregon Inland Development Company and by Richet, as

President, and Riddell, as Secretary, which she testified was the check which paid for the publication. She testified that Mr. Riddell knew of the mailing of this piece of literature on account of certain changes therein which were talked over at times when he was present. The witness mailed between five and ten thousand of this publication to the contract holders, through the medium of the United States mails.

"Mr. Reames: Government offers in evidence second issue of "Success."

Mr. McCamant: I object on the ground of incompetent, irrelevant and immaterial, and no responsibility shown for the mailing of it by the defendant. The defendant did nothing so far as the evidence shows to cause it to be mailed; and upon the ground that there is no charge in the indictment that the paper was mailed.

COURT: As I have ruled two or three times, that is not the question now. The question now is whether the Government is able to prove there was a scheme to defraud. That is one question, the first one; the second is whether Mr. Riddell was a party to it, if there was such a scheme, and third, if to further this scheme, the mails were used. And this is on the first two as I understand, and for that reason is competent. Especially in view that Mr. Riddell was consulted about the changes made before.

Exception saved.

Mr. McCamant: I don't like to be taking objections after the court has ruled. May I have a general excep-

tion to any testimony as to the mailing of anything further than the papers set out in the indictment?

COURT: Certainly."

Whereupon the second issue of "Success" was received in evidence and marked as Complainant's Exhibit Eighteen.

Whereupon the witness identified a contract of date March 11, 1910, as having been executed by J. T. Conway as party of the first part, and Oregon Inland Development Company, as party of the second part, and as having been signed by J. T. Conway and by F. Richet and H. H. Riddell. The witness proved the execution of the contract.

Whereupon the contract was offered in evidence and marked as Complainant's Exhibit Nineteen.

The witness further testified that it was the business of Mr. J. T. Conway, the general manager, to do most of the letter writing; that during all of the times concerning which the witness had testified, the offices of the company were maintained in the Chamber of Commerce Building, in Portland, Oregon, and that Riddell was the secretary of the company during all of that time; that the witness continued to act as stenographer and bookkeeper of the company until the last of April, 1911, and that during the month of May, 1911, she took care of the books at night. Miss Fannie Yost took her place as stenographer and bookkeeper when she left. The witness thereupon identified four bulletins as mimeo-

graph circular letters issued by the Oregon Inland Development Company for the purpose of raising the price of auction contracts to $300, and testified that these bulletins were sent out through the United States mails; that the signatures upon the bottom of the bulletins are exact reproductions of the signatures of Frank Richet, President, H. H. Riddell, Secretary and John T. Conway, General Manager. The witness further testified that she did not know whether or not Mr. Riddell had any knowledeg of the mailing of any of these bulletins; that prior to the time that these bulletins were mailed, the Oregon Inland Development Company was selling auction contracts exclusively upon the lands known as the Veasen lands; she further testified that Mr. Riddell was consulted relative to the raising of the price and that during October and November, 1910, one of these bulletins was mailed to every contract holder.

> Whereupon one of the bulletins was offered and received in evidence and read to the jury. It was marked as Complainant's Exhibit Twenty-four.

Whereupon the witness identified contract No. 516, issued by the Oregon Inland Development Company as having been signed by H. H. Riddell, as Secretary, and F. Richet, as President of the Oregon Inland Development Company. The contract bears date of December 14, 1909.

"Mr. Reames: I offer in evidence.

Mr. McCamant: I object your Honor, on the grund that the opening statement of the district attor-

ney shows that this contract and other contracts of this character were called in and new contracts substituted for them long prior to the 23d of May, 1911, and that therefore, this evidence is inadmissible as tending to charge the defendant with any complicity with anything which took place within three years.

COURT: Very well, part of the transaction.

Mr. Reames: You don't object on the ground I haven't proved the genuineness of their signatures?

Mr. McCamant: No, I don't care about that, but I take exception to the court's ruling.

Marked Complainant's Exhibit Twenty-five and read to the jury."

The witness testified that she was acquainted with an agent of the company by name of S. I. Renshaw, who lived in Oklahoma. She identified the signatures appearing upon the selling agent's contract of date April 25, 1910. She testified that the signature of H. H. Riddell had been placed upon the contract by the use of a rubber stamp.

Whereupon the contract was offered in evidence, was objected to by the defendant upon the ground that it is incompetent in that the signature of Mr. Riddell has not been proved, being merely a stamp put there, and on the ground that it is irrelevant and immaterial and not tending to support any issues. The objection was overruled and an exception allowed. The document was received in evi-

dence and marked as Complainant's Exhibit Twenty-six.

The witness identified a contract of date November 18, 1910, and identified the signatures of F. Richet, President, H. H. Riddell, Secretary and J. T. Conway appended to the document. The signatures were admitted to be genuine.

Whereupon the Government offered the contract in evidence, to which the defendant objected on the ground that it was irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The document was received in evidence and marked as Complainant's Exhibit Twenty-seven.

The witness testified that in November, 1910, the company quit selling the lands known as the Veasen lands and began to sell other lands situated within Union County, Oregon; she identified a piece of advertising literature entitled "Fruitdale" as part of the advertising literature of the Oregon Inland Development Company. She testified that this piece of literature was sent out through the United States mails to the prospects and old contract holders, and that it was sent out right after the company had changed to selling the lands within Union County and had quit selling the Veasen lands; that this piece of literature entitled "Fruitdale" was the first piece of literature issued by the company after the change; that this advertising literature was sent out in quantities of between five and ten thousand and that Mr. Riddell knew that they were mailing out literature

on the Grand Ronde valley; that Riddell was in the office of the Oregon Inland Development Company quite often while the literature was being mailed out and that the literature was kept on a big table with the exception of one package that was not broken; that there was always a package of the literature open out in the main office.

> Whereupon the Government offered in evidence the piece of literature entitled "Fruitdale," to which the defendant objected on the ground that the Government has not sufficiently shown the responsibility of the defendant for its issue, and on the ground that it is irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The publication was received in evidence and marked as Complainant's Exhibit Twenty-eight.

The witness identified a piece of literature entitled "Famous Fruits" as part of the literature advertising Union and Wallowa counties, and as having been issued by Mr. Conway and having been prepared by him; that she did not believe that this piece of literature was submitted to Mr. Riddell although they had talked over the advisability of publishing or issuing a map; that the reading matter was not submitted to Mr. Riddell but that the map contained in the exhibit was exhibited to him; that this publication was sent out by the company through the mails to every contract holder and to prospects, and also to all the agents.

Whereupon the Government offered the publication entitled "Famous Fruits" in evidence.

Mr. McCamant: I object to the whole paper on the ground it is irrelevant and immaterial, and I object to everything other than the map on the ground that the government's own evidence shows that the defendant was not responsible for it.

COURT: The objection will be overruled on two grounds. First, it is part of the Government's case in showing that there was a fraudulent scheme. Therefore it is competent. Second, it was gotten out by the general manager of the firm, a man employed by or whom Mr. Riddell assisted in employing according to the contract, and if in the proper scope of the employment I suppose some responsibility attaches to the employer and I think is competent.

Mr. McCamant: If your Honor's mind is firmly fixed on that last proposition, I don't want to discuss what is determined upon, but it is certainly contrary to all my ideas that there can be criminal responsibility of the officers of a corporation for the lapses of a man whom they have employed, without showing they are familiar with what he is doing and approved of it.

COURT: But the evidence in this case up to this time indicates that this concern was organized for a purpose the Government claims is fraudulent, and that was the object and purpose they had in

view. Mr. Riddell was one of the organizers, director and secretary of the concern, signed the contract to put a man in charge, to carry out the purposes of the organization, and if it was such as the Government claims, and I don't think a man can do that and then escape responsibility, even criminal, if the evidence sustains that theory. That is a question for the jury, of course.

Exception saved, paper marked Complainant's Exhibit Twenty-nine and read."

The witness identified a pamphlet entitled "Coming to Oregon," and testified that she had seen it in the office of the Oregon Inland Development Company during the time she was employed there as a stenographer. It was one of the pieces of literature sent out through the United States mails by the Oregon Inland Development Company to all contract holders and to all prospects. It was purchased in large quantities, of from ten to twenty thousand.

Whereupon the Government offered the pamphlet in evidence. The defendant objected to it upon the ground that it was incompetent in that there is no evidence that defendant is responsible for its preparation and its issuance, and on the ground that it is irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The pamphlet was received in evidence and marked as Complainant's Exhibit Thirty.

The witness identified a pamphlet entitled "Grand Ronde District in Oregon," and containing upon the out-

side cover a photograph of three apples, and testified that this was a booklet describing the Grand Ronde district, prepared by J. T. Conway and was bought in very large quantities; that it was mailed through the United States mails to the contract holders and to prospects, and sent to the agents by express; that it was considered one of the best pieces of literature. It was purchased by the officers of the Oregon Inland Development Company in quantities not less than ten thousand and probably there were twenty thousand copies. It was sent out through the mails during the latter part of 1910 and first part of 1911. All of the officers of the Oregon Inland Development Company knew of the mailing and sending out of this piece of literature. They all thought it was very fine and they talked about it and Mr. Riddell knew about it because he saw the witness writing some of it on the typewriter.

> Whereupon the Government offered the booklet in evidence. The defendant objected to its introduction upon the ground that it was irrelevant and immaterial and there was no evidence showing defendant to be responsible for either its preparation or its mailing. The objection was overruled; an exception was asked and allowed. The document was received in evidence and marked as Complainant's Exhibit Thirty-one.

The witness identified a large poster entitled "Grand Ronde District in Oregon" and containing a cut showing thirteen photographic views and a map marked in red. She testified that this was one of the pieces of lit-

erature of the Oregon Inland Development Company prepared and mailed in the spring of 1911. There were ten thousand copies of this purchased and they were sent to every agent, contract holder and prospect through the agency of the United States mails. This literature was kept in a pile right inside the door, on a table, and on the counter, and there was one of the posters on the wall. "Mr. Riddell knew we were getting out the big poster and he saw it on the wall and he saw it after it was published and he was very enthusiastic about it. He said this poster ought to get the business if anything would."

Whereupon the Government offered the poster in evidence, to which the defendant objected on the ground that it was irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The poster was received in evidence and marked as Complainant's Exhibit Thirty-two.

The witness identified check No. 429 of date March 8, 1911, in favor of the Portland Printing House Company in the sum of $63.75, drawn upon the Merchants National Bank of Portland, Oregon, and an attached receipted bill for 3000 circulars; a receipted bill of the Portland Printing House Company of date February 16, 1911, in the sum of $29.25, for 20,000 circulars; a cancelled check No. 362 of date February 3, 1911, drawn upon the Merchants National Bank of Portland, Oregon, in favor of the Portland Printing House Company, in the sum of $199.00; a cancelled check No. 485, of date March 31, 1911, drawn upon the Merchants National Bank in favor of the Portland Printing House Company

in the sum of $124.00, together with the receipted bills of the Portland Printing House Company attached thereto, and testified that the checks were all in the hand writing of the witness and that they had been signed by H. H. Riddell, as Secretary and F. Richet, as Treasurer of the Oregon Inland Development Company, and that these checks were written and issued in payment of the booklets and advertising literature of the Oregon Inland Development Company.

> The cancelled checks and receipted bills were offered and received in evidence and marked as Complainant's Exhibit Thirty-three.

At the time of the introduction of these exhibits, counsel for defendant stated:

"I don't think we have any objection to this except the general exception we already have."

The witness further testified that defendant H. H. Riddell, as an attorney, had examined all of the abstracts of the lands of the Oregon Inland Development Company during the time the witness was employed as stenographer. The witness further identified a book containing the record of all of the contracts that had been sold and testified that the books correctly showed the number of the contracts, to whom they were sold, the amounts due on the contracts and the amounts and dates of the several payments. (The book was also subsequently identified and testified to as being accurate by the witness Miss Fannie Dean, and witness Miss Bollman, who succeeded the witness as bookkeeper for the

company. All entries in the book were made by the three witnesses.)

> The Government offered the book in evidence and it was received and marked as Complainant's Exhibit Thirty-four.

The witness then identified a book of accounts as a cash book of the Oregon Inland Development Company, and testified that the entries therein were correct.

> The Government offered the book in evidence and it was received and marked as Complainant's Exhibit Thirty-five.

The witness then identified a book of accounts as the ledger of the company and testified to the accuracy of the entries therein, and that the same had been correctly kept.

> The Government offered the book in evidence and it was received and marked as Complainant's Exhibit Thirty-six.

The witness testified that it was the business of the company to keep a number of index cards, which were kept by the witness. She testified that these were records of the several contracts. They showed the date when the next payment of the contract holder would become due. Ten days before the payment was to become due, each contract holder would be notified by the witness of this fact and be asked for a remittance.

The witness testified that on April 1, 1911, the company moved its offices from the Chamber of Commerce building to offices in the Yeon building; they then maintained their offices upon the eleventh floor of the Yeon building, the rooms being so arranged that there was a general waiting room or reception room, and that to the right of this there was another office occupied by the defendant H. H. Riddell; to the left of the reception room there was an office occupied by Conway and Richet. The reception room of the Oregon Inland Development Company was used as a common reception room by the Oregon Inland Development Company and Riddell. The clients of Mr. Riddell and people who called to see him would come into the reception room of the company and then go directly into his office. During the period of time that the company was in the Yeon building, maintaining the common reception room, the literature that was being sent out consisted almost exclusively of the booklets showing the picture of the three red apples (Complainant's Exhibit Thirty-one) and the big red poster (Complainant's Exhibit Thirty-two). The advertising literature was kept partly in the reception room and partly in a little closet. Part of it was kept in Mr. Conway's room.

The witness identified the form application of contract holder Mary C. Jackson, and testified that this was a form used by the company up until the time the change was made on the lands in Union county. At the time the witness came to work for the company, the price of the contract was $240.00.

The Government offered the form in evidence. The defendant objected on the ground that it was irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. It was received in evidence and marked as Complainant's Exhibit Thirty-eight.

The witness identified a copy of a form duplicate application of contract holder Mary C. Jackson, which was printed on a blue slip of paper, and testified that this was a form of contract used by the company after the land had been transferred to the Grand Ronde Valley district and the price had been raised to $300.00. She testified that the first form or Complainant's Exhibit Thirty-eight, related entirely to the Veasen lands, while the second or blue slip related entirely to the lands in the Grand Ronde district.

The Government offered the form application in evidence. The defendant objected on the ground that it was irrelevant and immaterial. The objection was overruled and an exception was asked and allowed. The form was received in evidence and marked as Complainant's Exhibit Thirty-nine.

The witness identified a contract of date March 4, 1911, signed by the Oregon Inland Development Company, by F. Richet, President, and H. H. Riddell, Secretary, and signed by W. H. Patton. She identified the signatures as true and genuine, and testified concerning the execution of the contract.

The Government offered the contract in evidence. The defendant objected on the ground that

it was irrelevant and immaterial, but there was no objection on the ground that it had not been sufficiently proved. The objection was overruled. The defendant asked for an exception and it was allowed. The contract was received in evidence and marked as Complainant's Exhibit Forty.

Mrs. Fannie Dean, a stenographer and bookkeeper, and who is the same person referred to in the testimony as Miss Fannie Yost, testified on behalf of the Government that she was a stenographer and bookkeeper for the Oregon Inland Development Company during May, 1911, and until approximately May, 1912, and that she had worked two or three weeks during the month of February, 1911, as an assistant. Her principal duties were to send out the literature for the company. She identified Complainant's Exhibit Thirty-one as being a piece of literature with the three red apples pictured upon the front cover. She also identified the piece of literature entitled "Fruitdale," and also identified Complainant's Exhibit Thirty-eight as a part of the advertising literature of the comapny which she had sent out in large quantities through the mails. This literature and the letters of the company were mailed by her in the city of Portland, Oregon. The officers of the Oregon Inland Development Company, during the time she was employed by it, were Frank Richet, President, J. T. Conway, General Manager, and H. H. Riddell, Secretary. The offices of the company during February, 1911, were in the Chamber of Commerce building, and the witness saw Mr. Riddell there two or three times while the offices were there. The witness came to work for the com-

pany permanently on May 1, 1911, and continued her employment until about May 17, 1912. At the time the witness went to work for the company on May 1, 1911, the offices of the company were then in the Yeon building. The witness described the arrangement of the offices substantially in the same manner as they had been described by the witness O'Gara. The advertising literature of the Oregon Inland Development Company was sent out by her in large quantities through the agency of the United States mails. During the time the witness was employed by the company Mr. Riddell would come in through the reception room where the literature was and pass on into his own office.

"Q. What have you to say as to whether or not he knew that this literature was being sent out by you as an employe of the Oregon Inland Development Company?

A. Well, I couldn't say only that Mr. Riddell could see the literature there, it was lying there and he could see it; that is all I could say whether he knew or not.

The form letters would be gotten up and prepared by Mr. Conway; he would write them out in long hand—write them generally, then they would be submitted to Mr. Richet for his approval, and Mr. Riddell, and I would write them on the typewriter. Then that similar letter would go to all the contract holders through the agency of the United States mails. During all of the time I was employed as stenographer and bookkeeper of the company Mr. Riddell examined all of the abstracts."

The witness examined clearance receipt 554 in the sum of $300.00 of date May 29, 1911, and clearance receipt 557 for $300.00, of date June 9, 1911, and testified that the names of the contract holders, the dates and the addresses were all in the hand writing of the witness; that the clearance receipts had been signed by Mr. Richet, as president, and Mr. H. H. Riddell as secretary.

"Q. Now, taking up the first one, No. 557, it is in favor of a Mr. E. H. Bryant, of Gallup, New Mexico, and the one 554 is in favor of J. K. Hartline, Albuquerque, New Mexico, through what agency would that be transmitted to these gentlemen residing in those places?

Mr. McCamant: I object to that as not binding upon the defendant and irrelevant and immaterial for the reason that the matter to which the witness' attention has been called could not by any possibility be effectual to carry out the scheme alleged in the indictment because no further money was to be paid, according to the allegations of the indictment and also because there is no proof whatever that the defendant caused these papers to be mailed. He must either mail them or cause them to be mailed, as I read the statute or read the authorities, and in the absence of proof of that sort, the testimony designed to be drawn out in response to this interrogatory, would be immaterial.

Mr. Reames: I desire at this time to have them marked for the purpose of identification. I will say in answer that at the time I offer in evidence I will at the same time submit authority to the court to the effect

that if there be a scheme and artifice to defraud, it contemplated the use of the mail and a general manager was placed in charge of an institution, and if a piece of literature was contemplated by that scheme to be mailed and it was mailed, in pursuance of that scheme, every party to that scheme or artifice to defraud, is one of the parties who caused the piece of literature to be mailed. I will say to your Honor that I will have authorities on that which I will present at the time I offer it.

COURT: The witness can testify. Of course, this was passed upon by the court of appeals recently in the case against Belden in which they held that where there were two or more parties engaged in a scheme of this kind, the act of one was binding on the other, whether he knew of it or not, if in pursuance of the common scheme, and it has been repeatedly held that it was not necessary that the letter or pamphlet which went through the mails was effective to accomplish the purpose the party had in view, or whether it was intended to induce them to invest in the fraudulent enterprise or not; if it was in furtherance of the scheme that is all the law requires, although it may have been a perfectly innocent transaction within itself.

Exception saved."

"These clearance receipts were first prepared by me and then taken to Mr. Richet and Mr. Riddell for their respective signatures." After Mr. Richet had signed them, and after Mr. Riddell had signed them, they would then be mailed by the witness.

To all of the testimony relative to the execution and the alleged mailing of the clearance receipts, the defendant objected upon the ground that the mailing of these had not been connected up with the defendant, and upon the further ground that they were incompetent, irrelevant and immaterial. The objection was overruled and an exception was asked and allowed.

The clearance receipts were marked as Complainant's Exhibit Forty-one, for identification, and Complainant's Exhibit Forty-two, for identification.

During the time that the witness was in the employ of the company, payments were made to the company through the agency of the mails each day by contract holders, and the literature of the company was sent out as late as September, 1911. The business of the company was transacted entirely by Mr. Conway, and by the witness under his direction. She never took any orders from Mr. Riddell and he never directed the witness to make an entry in the books. He knew nothing about the records or books of the company and did not have the combination to the safe or a key to the office of the company; that all the records and books of the company were kept in the safe; that when Mr. Conway was out of town the witness was in charge of the office and the business; that if anything difficult arose, the witness kept it until Mr. Conway returned; that Mr. Riddell did not have access to the books or the papers of the company; that Mr. Riddell signed the clearance receipts as secre-

tary of the company when they were presented to him by the witness for his signature, and sometimes he signed them in blank; that the correspondence of the company was written by the witness at the dictation of Mr. Conway, and that Mr. Riddell had nothing to do with it; that Mr. Riddell examined the abstracts for the company and signed the checks when asked to do so by the witness; that during the summer of 1911 Mr. Riddell was away a great deal of the time attending to his own business; that his office was separate from the office of the company; that he seldom came into the office of the company; that he passed on abstracts and papers when requested to do so by Mr. Conway; that he did not take any part in the management or operation of the company's business; that form letters were sometimes submitted to him for an opinion as to form before they were sent out; that the letter to W. C. Hayward, which is set out in Count 3 of the indictment, may have been shown to him before it was sent out. As to this the witness did not remember. That the witness was not certain whether or not the letter was mailed to Hayward. That the clearance receipt set out in Count 5, and the clearance receipt set out in Count 4 of the indictment, were signed by Mr. Riddell, as secretary of the company and given to Mr. Conway. That Mr. Richet had been complaining because Mr. Riddell was not in his office when he wanted an opinion or some paper drawn; that Mr. Riddell worked for the company on a salary and was not consulted about the office business; that the witness received and sent out the mail, took care of the money coming in and entered it into the books, placed the funds in

the bank and prepared the checks at the direction of Mr. Conway. That the entire management of the business of the company was directed by Mr. Conway; that the witness thought the lands that the company were selling were good; that she was told that they were; that Mr. Riddell received the same information that she did; that the witness had no means of knowing anything about the lands except what was told her in the office; that Mr. Conway, Mr. Richet and Mr. Hibberd, the agents, and everybody who had knowledge of the lands, were loud in their praise; that the form letters were often written on a stencil sheet and mimeographed; that the witness knows of one form letter that was not submitted to Mr. Riddell, this being one that was dictated by Mr. Bowerman; that form letters were frequently submitted to Riddell for an opinion before they were sent out.

Whereupon E. W. Donnelly, Henry Ireland, Walter J. Jones, R. S. Shelley, J. E. Gribble, C. S. Congleton, J. W. Schmitz, W. A. Donnelly, G. C. Blake and G. C. Stevenson, were sworn and testified as witnesses for the Government. They were each forest rangers in the employ of the Government and had recently made a careful examination of all of the lands described in the photographic copies of the deeds set out in the two issues of "Success." They had cruised these lands and made a careful examination of the same for the purpose of ascertaining their true character, and in some instances had taken pictures thereof.

Whereupon each of said witnesses was by the Government asked to describe the kind, the quality and the

character of the said lands described in said photographic copies of said deeds.

The defendant objected to each question on the ground that the said lands did not tend in any way to connect the defendant with any charge set forth in the indictment; that said lands were not being sold or advertised for more than three years before the indictment was found, and that none of the lands or documents referred to and set out in the indictment relate to the above described lands, or any parcel thereof. The objection was overruled and to the ruling the defendant in each instance and in each case excepted and the exception was allowed.

Whereupon, over said objection and said exception, the witnesses thereupon testified in substance that the said lands described in said photographic copies of said deeds, and all thereof, were in the high mountains, many of them were on the tops of mountain peaks they were arid, rocky, dry, cut up with gulches and deep ravines, containing but a small amount of merchantable timber, of poor quality; that on some of the tracts snow lie as late as August; that the lands were nearly all within the boundaries of the National Forests, and were all, and every part thereof, absolutely worthless and unfit for any agricultural or horticultural uses whatsoever.

Over the same objection and exception the Government offered in evidence, and there was received, Complainant's Exhibit Twenty-one, Complain-

ant's Exhibit Twenty-two and Complainant's Exhibit Twenty-three,

showing the character of some of the Veasen lands, one of the said witnesses testifying that he had taken the said pictures upon said lands and that they truly portrayed conditions thereon.

With reference to Complainant's Exhibit Thirty-two, being the large poster entitled "Grand Ronde District, Oregon," the Government then offered testimony tending to prove that the picture entitled "Native Hay Scene on Our Land Near Promise," the picture entitled "Scene on Our Land in Baker County Note the deep soil on creek bank," the picture entitled "Trout Stream Crossing Corner of One of Our 20-Acre Tracts Southeast of Elgin," the picture entitled "Scene on Our Land West of La Grande," the picture entitled "Corn Field near Our Land in Wallowa County," the picture entitled "Part of Our Land near North Powder," the picture entitled "Part of Our Land in Baker County showing Creek," the picture entitled "Scene on One of our 40-Acre Tracts East of Imbler," the picture entitled "Part of Our Land near La Grande Note the gentle slope," the picture entitled "Peach Tree near Our Land West of Elgin," and each, every and all of said pictures depicted and portrayed scenes that were not upon any lands that had ever been owned by the Oregon Inland Development Company. In regard to several of said pictures, it was shown by the testimony of the parties whose pictures were shown on said photographs, that the lands were owned by parties other than the Oregon Inland

Development Company and had never been owned by said corporation.

The County Recorder of Baker County, and the County Recorder of Wallowa County, each being sworn, testified that they had each made a careful examination of all of the records of Baker and Wallowa counties relative to the ownership of lands in said respective counties by the Oregon Inland Development Company, and that the said corporation, as shown by said respective records, was not and never had been the owner of any lands or of any contract to purchase any lands situated within either of said counties.

The County Recorder of Union County, Oregon, testified that as shown by the records of said county, the Oregon Inland Development Company was the owner of the following described tract of land in said county:

The West half of the Southwest quarter, the Northeast quarter of the Southwest quarter and the North half of the Southeast quarter of Section Seventeen, Township One, South of Range Forty, East of the Willamette Meridian; the East half of the West half of Section Twenty-one, the Southwest quarter of the Southwest quarter of Section Sixteen, all in Township One, South, Range Forty East of the Willamette Meridian; the Southwest quarter of the Southeast quarter and the South half of the Southwest quarter of Section One, Lot Four and the Southwest quarter of the Northwest quarter of Section Three; Lots One, Two, Three and Four of the South half of the Northeast quarter and the South half of the Northwest quarter of Section Four;

the West half of the Northeast quarter and the East half of the Northwest quarter and the Northwest quarter of the Northwest quarter of Section Twelve, all in Township Four South, Range Thirty-five East; the North half of the Northeast quarter of Section Eight; the South half of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section Nine; all in Township One North, Range Thirty-eight East; the Southwest quarter of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section Five; the Northeast quarter of the Southeast quarter and the Southeast quarter of the Northeast quarter of Section Six; all in Township Two North, Range Thirty-nine East; the Southwest quarter of the Northwest quarter; the Northwest quarter of the Southwest quarter of Section Twenty-six and the North half of the Southeast quarter of Section Twenty-seven and the North half of the Northeast quarter of Section Twenty-eight, all in Township Three South, Range Thirty-five East of the Willamette Meridian; the North half of the Northeast quarter of Section Twenty-five, in Township One, South, Range Thirty-nine East of the Willamette Meridian; Lots One and Two in Section Thirty, Township One South, Range Forty East of the Willamette Meridian; the South half of the Southwest quarter of Section Twenty-seven and the North half of the Northwest quarter of Section Thirty-four, Township Three North, Range Thirty-nine, East of the Willamtete Meridian, and the Northwest quarter of the Northeast quarter of Section Eighteen, Township Two North, Range Thirty-nine, East of the Willamette

Meridian; Lot One, the same being the Northwest quarter of the Northwest quarter of Section Seven, Township Two North, Range Thirty-nine, East of the Willamette Meridian; the Southeast quarter of the Southeast quarter of Section Twenty-four; the North half of the Northwest quarter of Section Twenty-five; the Northeast quarter of the Northeast quarter of Section Twenty-six, all in Township One South, Range Thirty-nine, East of the Willamette Meridian; the South half of the Northeast quarter of Section Thirty-one, Township One South, Range Forty, East of the Willamette Meridian, all of said lands being in Union County, Oregon.

The witness further testified that the Oregon Inland Development Company was not the owner, and never had been, as shown by the records of Union County, of any other lands, or a contract to purchase the same, located in said county.

S. I. Renshaw, a witness called on behalf of the Government, testified that he formerly lived in Oklahoma; that he was one of the agents of the Oregon Inland Development Company, engaged in the sale of its auction contracts for it. He identified Complainant's Exhibit Twenty-six as his selling agent's contract. The witness began working for the company in April, 1910, and worked for it in the sale of the auction contracts until July, 1911. The witness identified a letter of date November 22, 1910, signed by the Oregon Inland Development Company as one received by him through the agency of the United States mails at the time when he was in Sapulpa, Oklahoma.

The Government offered the letter in evidence. The defendant objected upon the ground that it was incompetent, irrelevant and immaterial; that it appeared upon its face to be a stamped signature and not a signature. The objection was overruled and an exception was asked and allowed. The document was received in evidence and marked as Complainant's Exhibit Forty-five.

The witness testified that through the agency of the mail and express, and from the Oregon Inland Development Company, he had, while he was an agent, received a great amount of advertising literature; that he received a great number of copies of Complainant's Exhibit Thirteen, Complainant's Exhibit Fifteen, Complainant's Exhibit Twenty-eight, Complainant's Exhibit Thirty-nine, Complainant's Exhibit Thirty-one, Complainant's Exhibit Twenty-nine, Complainant's Exhibit Eighteen, Complainant's Exhibit Seventeen, a great many copies of the big red poster with the large number of pictures upon it, entitled "Grand Ronde District. Oregon," and that he had for the company used all of said literature in advertising the lands of the company and procuring auction contracts for the purpose of making sales. The witness identified Complainant's Exhibit Thirty-eight and Complainant's Exhibit Thirty-nine as two form applications similar in form to those used by him; that he took approximately fifty applications for the company during the period of time he was working for it; that he himself was a contract holder, had paid up the full purchaser price of his contract and had received no benefit therefor, had

never had his money returned to him, or received any land from the company.

Introduction of all of this testimony the defendant objected to on the ground that it was incompetent, irrelevant and immaterial; that the literature describing the Veasen lands described lands that had not been offered for sale within three years prior to the finding of the indictment; that there was no proof connecting the defendant Riddell with the mailing of any of said literature; the objections were all overruled and to the ruling of the court in each instance the defendant asked and was allowed an exception.

The witnesses Mrs. Frances Jackson, E. L. Swanson, Robert W. Simpson, George W. Page, Theodore Rehberg, Mrs. E. B. Watts, G. F. Deilke, Alfred F. Pitts, L. W. Howell, Harry Watts, Mrs. Patsy Doran, W. F. Burkhart, E. Baker, being called as witnesses on behalf of the Government, each testified in substance that they were auction contract holders of the Oregon Inland Development Company; that they had received through the agency of the United States mails, in letters and packages postmarked from Portland, Oregon, copies of all of the literature of the Oregon Inland Development Company heretofore shown in the bill of exceptions as having been introduced in evidence; that on account of the representations contained therein, they were induced to and did pay and continue to pay to the Oregon Inland Development Company the purchase price of their respective contracts; that said con-

tracts had been for a long time paid up in full, and that they had never received anything of value, or any land whatsoever on account of said contracts; that at the time they made their first payment, they received through the mails from the Oregon Inland Development Company a letter identically similar in form to Complainant's Exhibit Sixteen; that they, and each of them, had purchased said auction contracts without making any personal inspection of said lands; each of said witnesses produced, and there were offered in evidence, the originals of contracts similar in form to Complainant's Exhibit Thirty-eight and Complainant's Exhibit Thirty-nine, and each testified that at the time they executed the contract similar in form to Complainant's Exhibit Thirty-nine, they were not required to pay any additional amount of money on account of the change of the lands from the Veasen lands to the Union County lands, or on account of the increase in price.

While said witnesses were upon the stand, contract No. 521 was introduced in evidence, the defendant admitting the correctness of his signature thereto. It was marked as Complainant's Exhibit Forty-six; and clearance receipt of date February 27, 1911, being clearance receipt No. 521, admitted by the defendant Riddell to have been signed by him, was introduced in evidence and marked as Complainant's Exhibit Forty-seven; and letter, inclosure and envelope proven to have been received through the United States mails and bearing the stamped signature of Conway, Richet and Riddell, was offered in evidence and received and marked as Complainant's Exhibit Forty-eight; a yellow application

slip of date of April 12, 1910, signed by Robert W. Simpson, and identified by him as his contract with the Oregon Inland Development Company, was offered and received in evidence as Complainant's Exhibit Forty-nine; a clearance receipt numbered 525, which the defendant admitted was signed by him, was offered and received in evidence and marked as Complainant's Exhibit Fifty; an application and a contract of date July 21, 1910, executed by Theodore Rehberg, was received and marked as Complainant's Exhibit Fifty-two; contract No. 522, admitted by the defendant Riddell to have been signed by him and the signatures of F. Richet having been admitted, was received and marked as Complainant's Exhibit Fifty-three; a clearance receipt numbered 522, admitted by the defendant Riddell as having been signed by him and Richet, was offered in evidence, received and marked as Complainant's Exhibit Fifty-four; a letter of date May 21, 1910, proven to have been received by the addressee through the agency of the United States mails, bearing a facsimile signature of the defendant Riddell, was offered in evidence and marked as Complainant's Exhibit Fifty-five; an original application and contract of date April 5, 1910, in favor of A. F. Pitts was received and marked as Complainant's Exhibit Fifty-six; a clearance receipt of date September 18, 1911, bearing the admitted signature of Mr. Richet and the defendant Riddell, was received and marked as Complainant's Exhibit Fifty-seven; an application of date June 13, 1910, printed on yellow paper, together with another application of date September 22, 1911, printed on blue paper, both signed

by L. W. Howell and identified as his contract with the Oregon Inland Development Company, was received and marked as Complainant's Exhibit Fifty-eight; a form of acknowledgment receipt, of date June 15, 1910, addressed to L. W. Howell, at 520 Ninth Street, Hoquiam, Washington, and bearing a fac-simile signature of the defendant Riddell, was received and marked as Complainant's Exhibit Fifty-nine; an application upon a pink slip signed by Harry Watts, an application upon a blue slip signed by Harry Watts, and contract No. 517, of date December 31, 1909, and admitted to have been signed and executed by Frank Richet and the defendant H. H. Riddell, was received in evidence and marked as Complainant's Exhibit Sixty; clearance receipt No. 517, admittedly signed by Richet, as president, and Riddell, as secretary, was received and marked as Complainant's Exhibit Sixty-one; an application upon a yellow form, executed by Mrs. Patsy Doran, was received and marked as Complainant's Exhibit Sixty-two; clearance receipt No. 538, admitted to have been signed by Frank Richet and H. H. Riddell in favor of Mrs. Patsy Doran was received and marked as Complainant's Exhibit Sixty-three; the second application of Mrs. Patsy Doran was received and marked as Complainant's Exhibit Sixty-four; clearance receipt No. 528, which was admitted to have been signed by Richet and Riddell in favor of W. F. Burkhart was received and marked as Complainant's Exhibit Sixty- five; a pink application and a blue application executed by the witness E. Baker was received and marked as Complainant's Exhibit Sixty-six. The proof of the Gov-

ernment from these witnesses was further to the effect that these documents had been received from the Oregon Inland Development Company at their respective addresses through the agency of the mails of the United States and constituted and was a part of the respective contract and transactions with the Oregon Inland Development Company.

To the introduction of each, every and all of said exhibits the defendant duly objected upon the ground that they were irrelevant, and immaterial, and that they did not connect the defendant with any crime charged in the indictment. Each objection was overruled and the defendant asked and was allowed in each instance an exception.

To all of this testimony the defendant objected upon the ground that there was nothing shown therein to connect the defendant therewith; that it was incompetent, irrelevant and immaterial; that the testimony showed that that portion of the literature describing the Veasen lands, described lands which had not been sold within the three year period immediately preceding the finding of the indictment; in each instance the objection was overruled and the defendant asked and was allowed an exception.

Some of the witnesses testified that they had called at the office of the Oregon Inland Development Company and had seen the big red poster upon the wall.

R. H. Gilliland, a special agent of the General Land Office, testified that he had prepared a map showing

the location of Townships One, Two, Three and Four, both North and South, Thirty-five East, Thirty-six, Thirty-seven, Thirty-eight, Thirty-nine and Forty East, both North and South, which was a sectional map showing thereon correctly the location of the cities of Elgin and La Grande in Union County, Oregon; that there was also marked thereon in red ink all of the lands hereinbefore in this bill of exceptions described as being the lands owned by the Oregon Inland Development Company in Union County, Oregon.

The map was offered in evidence, was received without objection and marked as Complainant's Exhibit Fifty-one.

Whereupon, by the testimony of witnesses who had examined the lands situated in Union County, and in this bill of exceptions described as the lands owned therein by the Oregon Inland Development Company, the Government proved that the said lands were mountainous, rocky, cut up with draws and not fit for agriculture or horticulture.

One of these witnesses was R. W. Allen, an agricultural expert from the State Experiment Station, who made a personal examination of all of said lands in Union County at the instance of the Government, in order to determine the character and nature of the soil. He took a great many pictures upon said tracts of land, which were exhibited to the jury and introduced in evidence. In testing the character and nature of the soil, he did this from personal observation and from his experience as an expert in agricultural matters.

He used a one inch auger to bore into the ground to make his tests.

The Government offered and there were received in evidence, without objection, Complainant's Exhibits Sixty-seven to One hundred, inclusive.

The exhibits consist of photographs taken by the witness Allen upon the lands of the Oregon Inland Development Company located in Union County, Oregon, he having testified that these photographs fairly and truthfully depict and show the true character of said lands.

Whereupon by the testimony of witnesses who were familiar with the property in question, and who were residents of Klamath Falls, in Oregon, the Government proved that the lands of the Oregon Inland Development Company in Klamath County, which had been in the year 1912 by said company platted as "Orindale," were all distant two miles from the city limits of Klamath Falls, Oregon, and were absolutely worthless for town lot purposes; that there were two ranges of hills between the city and the said addition and the lands had a value of approximately from $15.00 to $18.00 per acre for grazing purposes, but were without value for town lots.

Whereupon a plat of "Orindale" was introduced and received in evidence and marked Exhibit One hundred twenty-five.

Whereupon the following papers were introduced and received in evidence:

A certified copy of a deed from F. H. McCornack and wife to Eugenie V. Richet to the land included in Orindale, marked Exhibit One hundred two;

A deed from Eugenie V. Richet and husband to the Oregon Inland Development Company for the Orindale tract, received and marked Exhibit One hundred one;

A certified copy of a mortgage from the Oregon Inland Development Company to Eugenie V. Richet, received and marked Exhibit One hundred five;

A certified copy of a satisfaction of mortgage for a portion of Orindale, marked Exhibit One hundred six;

A certified copy of a satisfaction of mortgage from F. H. McCornack to the Oregon Inland Development Company releasing a portion of the Orindale tract, received and marked Exhibit One hundred seven;

A certified copy of a satisfaction of mortgage to the Orindale tract, received and marked Exhibit One hundred eight.

Miss E. C. Bollman, being sworn, testified that she was stenographer and bookkeeper for the Oregon Inland Development Company from May, 1912, to February, 1913. That she succeeded Mrs. Dean (nee Fannie Yost). She identified the books of the company

that were kept by her (Exhibits Thirty-four, Thirty-five and Thirty-six). Her last work for the company was done in the latter part of February, 1913. Payments were made by contract holders during the time she worked for the company. Mr. Riddell knew nothing of the contents of the books. He did not direct any of the business of the company. He did not have the combination to the safe, or a key to the office. The books, records and money were kept in the safe. Conway transacted all the business. Riddell gave up his office and moved away about November 1, 1912. He was not about the office of the company afterwards.

Hiram S. House, expert accountant of the Department of Justice, testified that following his examination of the books and records of the company, he had prepared a list showing a list of all the contracts upon which the entire payments had been made to the Oregon Inland Development Company; this list was offered in evidence and received and marked as Complainant's Exhibit One hundred fifteen. The witness further testified that he had prepared a financial statement showing the receipt and distribution of the money received by said company. This was offered and received in evidence and marked as Complainant's Exhibit One hundred sixteen. The witness further testified that he had prepared a list showing from the books the names of the contract holders who had been transferred by the Oregon Inland Development Company to straight acreage and the amount of money due upon the several contracts at the time of the transfer. This was by the Government offered and received in evi-

dence and marked as Complainant's Exhibit One hundred seventeen.

There were offered and received in evidence, without objection, a duly certified copy of a warranty deed executed by Levi Kidwell in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed by F. S. Stanley et al., of date July 12, 1912, in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed by C. R. Hibberd and wife, dated March 1, 1912, in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed by C. R. Hibberd and wife, of date February 14, 1912, in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed by C. R. Hibberd and wife, of date September 2, 1911, in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed December 14, 1911, by C. R. Hibberd and wife, in favor of the Oregon Inland Development Company; a duly certified copy of a deed executed by W. T. Wade and wife in favor of the Oregon Inland Development Company, dated February 4, 1911; a duly certified copy of a deed executed January 23, 1911, by the Hackett Lumber Company in favor of the Oregon Inland Development Company. These were all received without objection and marked as Complainant's Exhibit Forty-four, as containing the descriptions of the lands owned by the Oregon Inland Development Company in Union County, Oregon.

J. K. Hartline, a witness called on behalf of the Government testified that he resided in Albuquerque,

New Mexico, and had lived there since the year 1906 and was a machinist by occupation. He identified a contract of date April 12, 1910, as his original contract with the Oregon Inland Development Company. The defendant admitted that it bore the stamped signature of the defendant Riddell, but did not admit that the defendant signed it. The document was received in evidence and marked as Complainant's Exhibit One hundred nineteen and a half. The witness testified that on account of that contract he had paid to the Oregon Inland Development Company $150.00 in cash. The witness identified clearance receipt No. 554, being Complainant's Exhibit Forty-one, for identification and testified that after he had paid up in full he received this receipt at Albuquerque, New Mexico, in June or July, 1911, and that he received it through the agency of the United States mails; that it came to him in an envelope postmarked at Portland, Oregon, and from the Oregon Inland Development Company at Portland, Oregon.

"Q. And this is the receipt you received at that time, at that place, and from the company and place, and in the manner concerning which you have testified?

Mr. McCamant: Same objection, incompetent, irrelevant and immaterial.

Mr. Reames: This receipt which the witness holds in his hand, being Complainant's Identification No. Forty-one, has been identified by the witness Fannie Yost, as bearing the signature of F. Richet as President and H. H. Riddell as Secretary, and she has testi-

fied as to the custom of the office in mailing these clearance receipts to the stockholders, and the Government now offers in evidence clearance receipt No. 554, and states to the court at this time that this forms the basis of Count 5 in the indictment.

Mr. McCamant: Objected to as incompetent, irrelevant and immaterial on the ground that the mailing of it has not been connected up with the defendant. The objection was overruled, an exception was allowed and the Exhibit was marked as Complainant's Exhibit Forty-one.

COURT: In making this ruling, I am not holding that the evidence does connect the defendant up with the mailing of it, but simply holding there is evidence tending to show his responsibility for it; that it all."

The witness further testified that he had never received anything of value for the money he had paid and had never received any property or any lot in Klamath Falls, Oregon. Upon cross examination the witness testified that the company did write a letter once about transferring him to straight acreage, but that he did not elect to take up the proposition. Whereupon the witness testified no further.

E. H. Bryant testified on behalf of the Government that he was a resident of Albuquerque, New Mexico, and had lived there for sixteen years, following the occupation of a locomotive engineer; that in June, 1911, the witness was living at Gallup, New Mexico; that he was one of the auction contract holders of the Oregon

Inland Development Company and purchased his contract in April, 1910; that by the terms of the contract he promised and agreed to pay the company $150.00; that he paid $20.00 down when he took the contract and $10.00 a month thereafter until the entire amount was paid. The attention of the witness was directed to clearance receipt 557, of date June 9, 1911, and he was asked to examine the same and to state how it came into his possession.

"Mr. McCamant: I object to the latter part of that question as to how it came into his possession, on the ground outlined in the testimony of Mr. Hartline. I think it is incompetent, irrelevant and immaterial how it came there, unless proven that the defendant mailed it; and I am not sure that I recorded an exception to your Honor's ruling on that first objection. May I have that as an exception to this ruling as well?

COURT: Yes.

The Witness: I received this through the United States mails at Gallup, New Mexico."

The witness further testified that he received the clearance receipt in June, 1911; that it came to him through the United States mails, inclosed in an envelope and from the Oregon Inland Development Company, and that it came from Portland, Oregon.

"Mr. Reames: This was identified by the witness Mrs. Dean, the signature of the two officers of the corporation and the ordinary custom of the office in mail-

ing these clearance receipts. It forms the basis of Count No. 4 and I wish to offer it in evidence.

Mr. McCamant: Object as incompetent, irrelevant and immaterial, and for the reasons outlined this morning."

The objection was overruled and an exception was allowed and the document was received and marked as Complainant's Exhibit Forty-two.

The witness further testified that he had never been transferred to a straight acreage contract and had never received from the Oregon Inland Development Company any deed to any town lot in Klamath Falls, Oregon, and had never received anything of value for anything he had paid to the Oregon Inland Development Company.

Upon cross examination the witness testified he had paid no money to the Oregon Inland Development Company after the date of the receipt but that he had completed his payments prior to the date of the receipt and had done nothing further in the way of paying money or incurring any burden whatever after he had received the receipt. Whereupon the witness testified no further.

W. C. Hayward, a witness called on behalf of the Government, testified that he lived in the State of Iowa and his occupation was that of a passenger conductor; that he had lived in Iowa for 32 years and that he was one of the original contract holders of the Oregon Inland Development Company. He purchased two contracts, one for himself, on March 1, 1911, and one for

his son, and had agreed to pay $240.00 for each contract. He had completed his payments and had paid the company $480.00 on the two contracts and had received no money or land, or anything of value, for the money he had paid. The witness examined Complainant's Exhibit for identification No. 119, being a letter of date June 26, 1911, and testified that he received either a copy of the letter, or the original, at Manila, Iowa, through the agency of the United States mails. The witness could not say what he did with the original letter because he could not find it in his office when he left and they had had a fire in the building where his office was located and a number of his papers were lost. He further testified that he forwarded the letter to the United States Attorney at Portland, Oregon. The witness further testified that he had received the letter at Manila, Iowa, through the mails and that it came to him inclosed in an envelope from the Oregon Inland Development Company at Portland, Oregon.

"Mr. Reames: This is Government's Identification No. 119, and forms the basis of Indictment Count No. 3, and is the letter identified by the witness Mrs. Dean, concerning which I asked her this morning as to the preparation of form letters, and as to whom they were submitted before they were sent out, and the Government now offers in evidence the letter of date June 26, 1911.

Mr. McCamant: Objected to as incompetent, irrelevant and immaterial, not having been connected up with the defendant."

The objection was overruled and an exception was asked and allowed and the letter was received and marked as Complainant's Exhibit One hundred ninteen.

The witness further testified that after he had received this letter from the Oregon Inland Development Company he made four payments upon his contracts; that he did not transfer to a particular piece of acreage, although, according to the terms of the letter, he had an opportunity to do so. Whereupon the witness testified no further.

A. H. Brobst, one of the contract holders of the Oregon Inland Development Company, testified for the Government and identified his application with the Oregon Inland Development Company. This was offered and received in evidence without objection, and marked as Complainant's Exhibit One hundred twenty-one.

Whereupon the Government offered in evidence and marked as Complainant's Exhibit Twenty, a large typographical map of the State of Oregon, showing the location of the several counties and townships within said state.

The forest rangers who had testified for the Government relative to the Veasen lands, had marked with crosses upon said map the location of the various Veasen lands concerning which they had testified.

Whereupon the Government announced that no proof would be offered of the mailing of the letters,

set out in Counts numbered one and two of the indictment.

Hiram S. House, an expert accountant for the Department of Justice, and admitted by the defendant to be qualified as an expert accountant, testified that he made a careful examination of and experted the books of the Oregon Inland Development Company at the instance of the Government; that the books of the corporation which had been introduced in evidence, showed the following facts:

That 260 auction contracts had been sold by the company between the date of its organization and October 17, 1910; that between the date of the organization and March 9, 1910, 28 auction contracts had been sold; that from March 23, 1910, to April 14, 1910, 39 auction contracts had been sold; that from April 14, 1910, to October 17, 1910, 193 auction contracts had been sold; that of the 260 auction contracts, one had been sold for $100, 7 had been sold for $125 each, 53 had been sold for $150 each, 11 had been sold for $180 each and 188 had been sold for $240 each, making a total sales price of $56,025. Upon these auction contracts there had been paid to the company between the date of its organization and October 17, 1910, $10,789; the first payment had been made to the company on November 24, 1909. The auction contracts that had been sold by the company up to February 17, 1913, consisted of the following:

One at $100; 7 at $125; 53 at $150; 11 at $180; 349 at $240; 143 at $300, making a total number of auction

contracts sold, 564, and a total sales price of $137,565; that the company had received in cash on its auction contracts $62,189.70; that no contracts for straight acreage, being contracts wherein specific tracts of land were described, had been by the witness included in any of the above computations; there appeared to be a credit of $182.50 and a credit of $400 which had been charged to one Murray. Of the 564 auction contracts which had been sold, 184 of these had been by the auction contract holders paid out in full to the company, six of them had been transferred to straight acreage contracts, leaving 178 auction contracts outstanding and paid out in full. These 184 contract holders had paid to the company $38,755; 94 of the auction contract holders had been transferred to straight acreage contracts in Union County and one appeared to have received a lot in Klamath Falls; 6 of these contract holders had fully paid up before they were transferred. Before the date of the transfer to the Union County property, the company had received from its auction contract holders $10,750. The total cash receipts of the company are shown by the books as follows: from the sale of auction contracts, $62,689.70; from straight acreage contracts, $4,769.50; from the sale of Orindale lots, $195; cash borrowed from bank, $500; cash received from Wilsher, $10; cash received from Byrne, $403.21; cash received from Markillie, $403.21, making the total receipts $69,470.62.

The cash disbursements as shown by the books are as follows:

Paid to C. R. Hibberd, $16,000; paid to Muck, $390; paid to John Veasen, $300; paid to Plass, $2050; paid to Mrs. McMahon, $160; paid to the State of Oregon, $120; paid to Frank Richet, $4040; paid to J. T. Conway, $4910.15; paid to Frank Richet on commissions, $568; cash refunded to contract holders, $710; paid for expenses, $31,340.32; paid for sundries, $616.70; paid for surveying, $1,818.85; paid to Murray, $860; paid to Markillie, $90; paid to Byrne, $50; paid to H. H. Riddell, $1,595.60; paid to Upton, $500; paid to bills payable $3,350, making a total disbursement of $69,-469.67, and leaving a balance of cash on hand on February 17, 1913, of 95 cents. From March 1, 1912 until February 17, 1913, the company had received in cash $8,950, and on March 1, 1912, had cash on hand $455.50. During this time the disbursements of the company were as follows: to Conway, $1,825.15; to Richet, $980; for bills payable, $980; for surveying, $1,100; for refunds, $170; to Riddell, $383.20; for expenses, $2,111.20, or a total of $9,599.53.

The witness further testified that the compensation to Mr. Riddell was paid mostly by way of office rent and telephone bills, and that he was paid but very little cash.

Whereupon the Government rested.

Whereupon the defendant called C. R. Hibberd, who being sworn, testified that he entered into a contract with the Oregon Inland Development Company in the fall of 1910 to furnish it lands in sufficient amount to satisfy the demands of its contract holders. The

lands were to be substantially such as were advertised by the corporation. The first contract was entered into about September 20, 1910, and the second contract on or about the 17th of October, 1910. Witness considered the lands that were purchased by him for the company suitable for raising fruit. The Wade and Hackett lands were fair fruit lands and in great part good soil. The other tracts were excellent fruit lands. The lands at Starkey prairie were not so suitable for fruit raising, but would raise fruit and were excellent for general agricultural purposes. Witness further testified that he owned property and had sufficient money to obtain property in amounts sufficient to enable the Oregon Inland Development Company to supply every contract holder with the required amount. At the time he entered into the contracts in September and October, 1910, he had under contract to purchase, lands in Baker, Wallowa counties similar to those described in the poster (Exhibit Thirty-two). These he contemplated turning into the corporation. Witness was often in the office of the company in Portland. Riddell was seldom or never in the office, and did not conduct any of the business of the corporation. Riddell understood that the lands were all first class lands, suitable for fruit raising. He was told so by myself, Conway, Richet and others and had every reason for believing that the lands were as good as was represented. Riddell was always careful in his work of passing on abstracts and found objections many times to titles that witness thought extremely technical. Witness had heard Conway and Richet say that Riddell had no interest in the corpora-

tion and that he did not take any part in the management of the business. His position as secretary was part of the duties for which he was paid, that he exerted no authority as a director, which was nominal to complete the board to the number required by law.

The witness identified a contract of date October 17, 1910, between the Oregon Inland Development Company and the witness, and proved its execution and the genuineness of the signatures attached thereto. It was received in evidence and marked as Defendant's Exhibit "E;" also a contract of date September 29, 1910, which was received in evidence and marked as Defendant's Exhibit "D;" also a contract of date May 6, 1911, which was received in evidence and marked as Defendant's Exhibit "F;" also a contract of date May 22, 1911, which was received in evidence and marked as Defendant's Exhibit "G;" also a contract of date May 22, 1911, which was received in evidence and marked Defendant's Exhibit "H;" also a contract of date July 19, 1911, which was received in evidence and marked Defendant's Exhibit "I"; also a contract of date July 19, 1911, which was received in evidence and marked Defendant's Exhibit "J"; also a contract of date July 19, 1911, which was received in evidence and marked as Defendant's Exhibit "K;" also a contract of date October 3, 1911, which was received in evidence and marked Defendant's Exhibit "L;" also a contract of date February 28, 1912, which was received in evidence and marked Defendant's Exhibit "M;" also a contract of date July 19, 1911, which was received in evidence and marked Defendant's Exhibit "N;" also a

contract of date December 18, 1911, which was received in evidence and marked Defendant's Exhibit "O."

Upon cross examination the witness testified in reference to the contract of date December 18, 1911 (Defendant's Exhibit "O") that this was a contract, by the terms of which the property described therein which had been theretofore under contract with the Oregon Inland Development Company, had been by said company released back to the witness upon the terms and conditions stated in the contract. The lands described in said contract were for the use and the benefit of, and the provisions of the contract were in favor of the 118 contract holders whose names are attached to the list. Of these 118 contract holders, but 29 were auction contract holders and the rest were contract holders who had contracted to purchase straight acreage. The witness was unable to state why it was that of 94 auction contract holders who transferred to straight acreage, that only six of them had been fully paid up subsequent to the execution of the contract of date December 18, 1911. The only lands of the Oregon Inland Development Company which were then available to take care of the auction contract holders, were the lands in Union County, consisting of approximately 2700 acres for which the deeds which are in evidence had been issued. These 2700 acres of land are all delineated and shown upon the big Government map as being marked in red (Complainant's Exhibit Fifty-one).

"The Oregon Inland Development Company never owned any lands, either in Wallowa county or in Baker

county, but I had originally intended to purchase lands in those counties for it in accordance with my contract with it of date October 17, 1910, being Defendant's Exhibit "E." Subsequent to the execution of the contract of date December 18, 1911, I came to Portland, Oregon, and took charge of the offices of the Oregon Inland Development Company for the purpose of receiving the money upon the collections and applying it as they owed me a large amount of money and still owe me approximtaely $4000 on account of my transactions with them. I never did intend and, of course, would not deed either to the company or for the benefit of the company, any lands, or do any other thing than I bound myself to do in the said contract of date December 18, 1911, by which, of course, I was bound.

I saw the advertising literature of the Oregon Inland Development Company as it was being sent out and I thought that the representations made therein were pretty strong. I wrote a letter to the company of date October 25, 1910, and the letter you now hand me is the original of that letter."

Whereupon the Government offered the letter in evidence, to which the defendant objected on the ground that it was incompetent, irrelevant and immaterial. The objection was overruled and the defendant asked and was allowed an exception. The letter was received in evidence and marked as Complainant's Exhibit One hundred twenty-two.

"I was familiar with all of the lands owned by the Oregon Inland Development Company. The said com-

pany did not own 40,000 acres of Oregon farms; neither did they ever have a contract to purchase said amount of lands from me. I do not know where they had 2,712 farms, subdivided into 10 acres each, or 200 farms of 20 acres each, or 150 farms of 40 acres each, or 20 farms of 80 acres each, or one farm of 320 acres, or one farm of 640 acres. The pictures appearing in the literature entitled "Fruitdale," and the pictures shown upon the big red poster, are pictures of land which are not upon and are not adjoining any of the lands owned by the Oregon Inland Development Company, although I had shown Mr. Conway lands similar to these in Union county and had intended to purchase the same for the company in accordance with my contract with the company of date September 29, 1910. The contract of date December 18, 1911, being Defendant's Exhibit "O," rescinded, of course, all of the other contracts which had been made by the company and myself prior to that time. In my opinion, 85 per cent of the lands for which the corporation now has deeds consist of good agricultural and fruit lands.

The 94 auction contract holders who were transferred to straight acreage contracts owed at the time they were transferred upon their contracts a total of $14,900, being an average of $148 yet due upon each auction contract. The balance due from these auction contract holders to the company at the time of the transfer amounted, of course, to more than the company had either paid or agreed to pay to me for these lands.

The letter which you show me, of date October 5, 1910, and the letter which you show me of date Sep-

tember 16, 1911, were both received by me through the agency of the United States mails and are from the Oregon Inland Development Company.

Whereupon the two letters were offered in evidence and they were received and marked as Complainant's Exhibit One hundred twenty-three and Complainant's Exhibit One hundred twenty-seven.

Whereupon Dr. F. W. Whiting, E. G. Bailey, H. L. Willis, N. P. Parks, O. L. Maxwell, C. A. Galloway, C. S. Rice, F. D. Smith, A. J. Colt, C. T. Colt, D. Sommer, E. L. Harris, J. T. Phy, L. A. Stoop and E. M. Coombs, each testified for the defendant in substance that the lands in Union county, owned by the Oregon Inland Development Company, were good for agriculture and horticulture.

John Beletich testified that he was a contract holder and was one of the straight acreage contract holders. He had examined the property upon which his tract of land was situated and was satisfied with it and had subsequently purchased other tracts.

S. B. Wilkins testified that he had been an agent of the Oregon Inland Development Company and had sold many contracts. He had purchased 20 acres from the company of the land that it was advertising in Union county; that the land was all that it was represented to be in the literature and representations of the company. He was frequently at the office of the company and transacted all of his business with either Conway or Richet and Riddell did not take any part in the business

transactions with him. "The $400 check testified to by Miss O'Gara as having been ordered drawn by Riddell, was received by me in the mails when I was at Lincoln, Nebraska, and was cashed by me at Lincoln, Nebraska. I did not see Riddell in the transaction. I talked with Conway and Richet. The smaller check shown, bearing date March 10, 1911, was received by me before I came to Oregon and was cashed by me at the Merchants National Bank in Portland, Oregon. It was in payment of commissions which I had earned."

John Walter testified that he was a civil engineer; that at the instance of Conway and Richet, subsequent to their indictment, he had examined the auction contract lands of the company in Union county and that the said lands were fairly fit for agriculture and horticulture. He produced, and there were offered and received in evidence, without objection, a package of photographs which were marked as Defendant's Exhibits "P" and "Z," inclusive. The witness testified that he had taken these pictures upon the deeded lands of the said company and that they truly and correctly showed and depicted scenes thereon.

M. G. Munly, Dr. A. J. Giesy, John A. Bell, C. R. Davis, Frank B. Riley, Judge J. P. Kavanaugh and E. Versteeg each testified that he had known the defendant Riddell for many years and knew his reputation in the community for honesty and integrity, and that his reputation in the community was good. W. S. Chapman testified that he was well acquainted with defendant, and had been in his office many times during the summer

of 1911; that he knew from his personal knowledge of defendant's business that he gave no time to the conduct of the company's business. That at one time Frank Richet had told witness that Riddell had no interest in the company and was only acting as its attorney.

Edith C. Bayley testified that she was a stenographer and bookkeeper for the Oregon Inland Development Company in the winter of 1909 and 1910; that during the time she was connected with the company she conducted all its correspondence and kept its books; that defendant had no direction of the affairs of the company and only performed such legal duties as were required by Mr. Richet and Mr. Byrne the then manager of the company. Mr. Riddell was seldom in the office of the company and only came when sent for to sign some paper or for some legal matter.

Guy Rogers testified that he was often in the office of defendant; that on one occasion Conway had told witness that Riddell had no interest in the company and was merely a hired attorney paid to do the legal work of the corporation. John Hardin testified that he was a client of defendant and was often in his office. His knowledge of defendant's affairs was intimate; that defendant was not actively connected with the management of the company. Conway had told witness that defendant was a hired attorney for the company. John Hanthorn testified that in 1910 he had desk room in the office of the Oregon Inland Development Company and was familiar with its business; that defendant was sometimes in the office but did not take any active part in the

management of the company's business; that Frank Richet, the president of the company, had often remarked that defendant had no interest in the company and was simply an employe of the company.

C. W. Riddell testified that he is a brother of defendant; that he occupied an office with defendant in the Chamber of Commerce Building in 1901 and 1910 and when the Oregon Inland Development Company was organized; that he heard much of the talk between Richet, Byrne, Markillie and Upton regarding the organization and understood from what they said that defendant was not to have any actual interest in the company, nor be engaged in its management, but was to perform legal services for which he was to be paid a compensation. Conway had informed witness that defendant had nothing to do with the management, or letting the contract for the survey of Orindale; that Richet and Conway managed the affairs of the company; witness wanted the work of surveying Orindale; defendant was asked to try and get the job of surveying Orindale for witness, but was not able to influence Richet and Conway, who had made other plans.

J. T. Conway, being sworn, testified that he was the general manager of the Oregon Inland Development Company, and came into the company in March, 1910. He purchased his stock from Veasen, Markillie and Byrne, and assumed charge in March, 1910, and had entire control of the corporation. Witness prepared and attended to the printing of "Success" and all subsequent literature. He did not submit any of

the literature to Riddell, nor show it to him after publication. Riddell was the company's attorney and was employed to transact the legal business and to act as secretary. He was paid $50.00 per month for the work that was required of him. He was not consulted about the business. During 1910, Conway and Richet developed several schemes and plans for selling lands in connection with the business of the company, knowledge of which was kept from Riddell. Some of their legal work was done by Henry Collier. The contract between Conway and the company was prepared by Collier after the terms had been agreed on between Conway and Richet. Riddell was not consulted about the contract and simply signed it as secretary when requested. The letters containing the printed signature of Riddell were prepared by Conway, and printed. Riddell was not consulted about them. Conway obtained Riddell's signature and had a rubber stamp made. The printed signature was made from the rubber stamp. Riddell did not know that the printed signature was used. He afterward learned of the stamp and demanded its return. It was not used thereafter, with his knowledge.

Conway, during the summer of 1910, went to La Grande to examine some tracts of the Veasen lands. He did not like them and made arrangements with Hibberd and Phy to buy other land in Union County and the adjoining counties. Hibberd came to Portland, and on September 29, a contract was executed with Hibberd for the purchase of the Palmer lands in Union County. A second contract was executed with Hibberd October

17, 1910 for 15,000 acres of land in Union, Baker and Wallowa counties. These lands were to be good fruit lands unimproved. The title to the Palmer lands was examined by Riddell who found it defective. All sale of the Veasen lands was then stopped and all contracts that had been sold were transferred to the Union County lands as fast as possible. Circulation of Success was stopped, and literature descriptive of Union County prepared and sent out. "Famous Fruits" was prepared first, followed by the booklet with the red apples on the cover, and later by the poster. Riddell was not consulted about any of this literature. It was not shown to him before it was printed. He was not consulted about the mailing or distribution of any of it. Riddell was told by Conway, Richet and Hibberd that the Union County lands were good fruit lands. He had no knowledge of them other than what he got from us. Hibberd and Conway prepared the map showing lands in Union, Wallowa and Baker Counties. Riddell knew nothing of it. Hibberd agreed to buy lands in the territory outlined in red. The negotiations with Hibberd were made by Conway and Richet. Riddell was not consulted. In November, 1910, his duties were outlined in a written contract. Conway had this prepared by Collier. Richet afterwards wanted to cancel it and dispense with Riddell's services, thinking the work could be done cheaper. Conway held a majority of the stock and insisted on retaining Riddell. Riddell examined numerous abstracts of title to the lands in Union County. Riddell was not consulted about any purchase. Richet and Conway arranged for the purchase of the land at

Klamath Falls. Riddell was not consulted. He was told that the land was suitable for town lots. The Hayward letter (exhibit 119) was prepared by Conway. It was not shown to Riddell. He knew nothing about it. He did not know that it was mailed. The clearance receipts (set out in counts 4 and 5 of the indictment, exhibits 41 and 42) to E. H. Bryant, and J. K. Hartline, were taken by Conway to the office of the Northern Trust Company and left there for registration. No directions were given for mailing them. Riddell did not know what disposition was made of them. Riddell did not have a key to the office, nor access to the books and papers of the company. During the day he had the use of the company's large room for reception purposes. The seal of the company was not in Riddell's custody; he did not have access to it. He rented his office from the company.

Upon cross examination, the witness testified that the Oregon Inland Development Company did not own any lands to which it had title in either Baker County or in Wallowa County. He further testified that he and Richet had been indicted and convicted upon a similar indictment to the one upon which the defendant Riddell was being tried and that subsequent to the service of his sentence he had been pardoned. With the proper foundation laid for each impeaching question he was asked if he did not, at the former trial, testify as a witness under oath that he was not the general manager of the Oregon Inland Development Company and if he did not at that time deny that he was the general manager; also if he had not, at the former trial, testified that the

only thing he had to do with getting up the issues of "Success" was to permit his name to be put upon the outside cover; also if he had not, at the former trial, as a witness denied responsibility for the advertising literature entitled "Success," and had testified in regard to this that there were attorneys connected with the company who should be responsible; also if he had not, at the former trial, testified that he had no authority to act in any matter except under direction of the board of directors of the Oregon Inland Development Company; also, if he had not testified, at the former trial, that it was the intention of the company to send Mr. Riddell down to Florida in order to learn a proper method of the disposition of the lands to the auction contract holders; also, if he had not, at the former trial, testified that Mr. Riddell had worked out the plan by which, providing that a smaller number than 3,086 contracts had been sold, the number of the larger contracts which would have to be deeded to the auction contract holders was determined; also, if he had not testified, at the former trial, that the defendant Riddell was the owner of six shares of the capital stock; also, if he had not testified, at the former trial, that Riddell had prepared a letter and suggested to the witness that each contract holder be advised that the reason for changing from the Veasen lands to the Union County lands was that a projected railroad into Union County would make the Union County lands more valuable; also, that if he had not testified, at the former trial, that in regard to the purchase price of the lands those matters had been figured out by Mr. Riddell; also, if he had not testified

at the former trial relative to the piece of literature, Complainant's Exhibit 31, entitled Grande Ronde District, Oregon (showing picture of three red apples) that Riddell had examined it and stated that the pictures were not very pretty and that better pictures ought to be put in the book. The witness having in each instance either denied that he had so testified at the former trial or having stated that he could not remember, the government, upon rebuttal, impeached the witness by showing that he had given, at the former trial, all of the testimony claimed and indicated in each, every and all of the foregoing impeaching questions.

Upon direct examination, the witness having testified that he had never examined the Veasen lands prior to October, 1910, was shown on cross examination a letter under date of July 27, 1910, written to the witness by Ethel M. Brodhagen, together with a carbon copy of the reply thereto, of date August 2, 1910, and the witness admitted that he had received the letter and had answered it as per the letter of August 2, 1910. These two letters were then, by the government, offered in evidence and received and marked as Complainant's Exhibit 128-A, and Complainant's Exhibit 128-B. To the introduction of each of these letters the defendant objected on the ground that it was incompetent, irrelevant and immaterial. In each instance the objection was overruled, and the defendant asked and was allowed an exception.

W. D. Fenton testified that it was a common practice for attorneys to act as director and secretary in

corporations for their clients, where they had no actual interest.

Upon cross examination the witness testified that the practice, of course, would depend a great deal upon the kind of a corporation that it was, and that it would not be a common practice for attorneys to act as a director or as secretary of a corpoartion which was not engaged in a legitimate business.

Mrs. Helen Glover testified that she was a stenographer in defendant's office in 1909 and until the summer of 1910. She was in his office at the time the Oregon Inland Development Company was formed, and prepared the papers at the direction of Mr. Upton, who was occupying the same reception room with Mr. Riddell at the time. Mr. Riddell looked the papers over and suggested some alterations, which Mr. Upton told me to make. I was at the time very familiar with Mr. Riddell's affairs and took care of all detail work in connection with his business. I was completely in his confidence. I knew the men who organized the company from meeting them in the office. Mr. Veasen talked with me often, and I understood from him that the lands were good. I think Mr. Riddell had the same idea that I did. I was often in his private office while the corporation was being organized. After it was on a going basis I knew less about it, as the officers were in our office less. They came in when they wanted checks signed or papers executed. Mr. Riddell's position as secretary and director was merely nominal. He signed checks as a routine matter. I heard him object

once to signing a check because Mr. Richet had not signed it. Mr. Riddell was very much occupied with his professional business and did not give the company's affairs any attention other than to perform the duties required of him and for which he was paid. He had a number of important cases in court while I was in his office. I never saw any of the company's literature in our office and know that Mr. Riddell was not in their office very much. He was too busy and I would have known, for I always knew where to phone for him when he was needed. He spent much of his time in court and in the library. This was not the only corporation in which he acted as secretary and as one of the directors.

Defendant testified in his own behalf; that I assisted in organizing the Oregon Inland Development Company in November, 1909, performing some of the legal work; Markillie, Byrne and Veasen were introduced to me by Upton whose clients they were. The company was organized to exploit and sell a large tract of land owned by Veasen. Veasen desired to exercise control of the company but did not wish the stock to be in his name. At his instance I subscribed for six shares of the capital stock, for him, and was elected a director to represent his interests. I was also made secretary to keep the records, for which services I was paid a compensation. I did not prepare any of the literature of the company, and did not see any of it before it was sent out. In March, 1910, Conway made an arrangement with Veasen and Richet by which he became the owner of some stock, and he and Richet acquired substantially all of the stock of the company. Conway

was made general manager and took control of the company's business. I did not know anything about the lands of John Veasen other than what he and others told me. I was told that they were excellent for fruit raising. I was not present at the first stockholders' meeting. I did not write or prepare the record of the first meeting. I did not have any interest in the contract with Veasen. I did not prepare the deeds, but knew that Veasen had executed and had in the company's office a large number of deeds conveying lands to the Oregon Inland Development Company. I understood and believed that these deeds had been deposited in escrow in the Lumbermens National Bank. I understood that a large acreage of these lands was near Sheridan in Polk County, Veasen so stated. I signed such papers as were required to be signed by the secretary of the company and wrote up the records of the board meetings that I attended, and also where memoranda were kept of meetings that I did not attend. I had no reason to believe the lands were poor. I had every confidence in Mr. Richet, knowing that he was a merchant of many years standing in Portland, and would not engage in an unsound business. After Conway took charge of the company's business all literature was prepared and sent out under his direction, as I supposed. I did not see any of it. None of it was submitted to me. I saw some pieces of literature at times and had some superficial knowledge of it. I remember the booklet with the three red apples on the cover and the large poster. At the time I saw the poster Hibberd, Conway and Richet all said that the pictures on it

accurately represented the lands of the company; that they were pictures taken on the lands as they were described. During the winter of 1910 and 1911, I was busily engaged in professional work, trying a number of difficult cases. One case in particular against the Pacific Railway and Navigation Company was on trial forty-three days; another in the U. S. Land Office at Vancouver required 20 days' trial work. Then a large amount of time was consumed in library work, and in preparing evidence. During this whole time I was in my office but little. I signed many checks, clearance receipts and other papers that required the secretary's signature. They would be brought to me and I would sign them as Mrs. Dean would request, without asking what they were, but knowing that they were merely routine matters for which I was paid. In November, 1910, I entered into a written contract with the company for this work to act as secretary and attorney for a compensation of $50 per month. This contract represented my entire interest in the corporation.

The contract was produced and identified by the witness and offered in evidence and received and marked exhibit AA.

I never exerted any authority as a director, nor knew what the company was doing in more than a general way. The certificate of stock for the six shares that I subscribed for John Veasen, was indorsed over to him sometime in 1911. I cannot tell the date. I kept no record of it. The transfer was never noted on the record book, for the reason that the certificate was never pre-

sented for cancellation, and until it was surrendered, and a new certificate requested, no change would be made. The records of the company were not in my possession; they were kept in the company's office; I did not have a key to the office, nor know the combination to the safe, not have access to the records, books or papers of the company. I did not keep the seal. I did not know that such persons as W. C. Hayward, J. K. Hartline, or E. H. Bryant existed until I saw their names in the indictment. I had nothing to do with mailing the letter to W. C. Hayward, nor did I know that the clearance receipts to E. H. Bryant and J. K. Hartline, were mailed, or what was done with them. I did not at any time direct the mailing of any of these documents, and had no knowledge that they were ever mailed. I rented my office room in the Yeon Building from the company and the compensation paid me just about satisfied the rent, charge and the telephone. I examined the abstracts of title whenever required by the company, and prepared such contracts and papers as directed. I always believed that the lands in Union County were all that they were represented to be. I was told by Conway, Richet, Hibberd, J. T. Phy, T. O. Bird, J. D. Slater of La Grande, and others, that these lands were excellent in quality and well situated for fruit raising. I remember in particular a number of affidavits that were shown me signed by a number of the leading citizens of Union County in which these lands were stated to be good fruit lands. I never saw a tract of land that the company purchased or had under contract. My entire knowledge came from what others said. I relied entirely on the integrity of

Mr. Richet. I understood that Mr. Hibberd was a business man of excellent standing in Union County and that any lands that he might purchase for the company would be good for the purpose. Mr. Phy, the present county judge of Union County, said that Mr. Hibberd was an excellent judge of lands and that he was reliable. I had no reason to suspect that these lands were other than what they were represented to be until after the government had undertaken the investigation of them. I prepared many of the contracts of the company at the direction of Conway.

Upon cross examination the defendant testified that the form letters of the company were sometimes submitted to him for approval; that is, for an examination relative to the grammar, before they were sent out, and that before he could make these corrections, if any were required, it would be necessary for him to read them. He could not say how many of the form letters were submitted to him and could remember only one distinctly. There might have been a great many more but the witness could not remember.

The clearance receipts were submitted to the witness before they were mailed. They had to be signed by the witness before they could be mailed. The witness knew that the large majority of the contract holders of the Oregon Inland Development Company lived at points outside of the city of Portland, Oregon, and that as to these necessarily these clearance receipts would go to them through the agency of the United States mails, and that they would be mailed at Portland, Oregon; that if the

witness had not signed the clearance receipts they would not have been transmitted to the auction contract holders; that the signature of the witness was a part of the proceedure by which the contract holder received his clearance receipt through the United States mails; that the witness read the clearance receipts before he signed them.

The attention of the witness was directed to the fact that the clearance receipts recited that there were 3086 tracts of land and 3086 lots in the town of Klamath Falls, Oregon, and that he knew that this statement was in the form before he signed them; that he did not know where the 3086 tracts were nor where the several subdivisions of the lands into ten acre, twenty acre, forty acre, eighty acre, one hundred sixty acre, three hundred twenty acre, and six hundred forty acre tracts were. Necessarily, after the change to Union County lands, they would have to all be located within Union County. The witness further testified that he was the secretary and director of the company, and if any of the contract holders had presented to him one of these clearance receipts calling for the 3086 tracts, and the 3086 lots, he would have told them that he did not know where the lands or the lots were, and that they should go to the general manager of the company for the information; that after the Veasen contract was canceled the witness knew that the company did not own 40,000 acres of land, and that all they had was a contract with Hibberd for the purchase of approximately 17,000 acres; that the witness did not know how many contracts the company had sold.

The attention of the witness was directed to the fact that when the tracts were first being issued the numbers started with number 501 instead of with the number 1; that he had sent contracts as early as April, 1910, but that he could not say whether or not at that time he knew of this arrangement. His attention having been directed to the fact that he had signed contract number 522, he then testified that he knew at that time that the company had not sold five hundred twenty-two contracts.

The attention of the witness was directed to the big red poster and he testified that he probably saw it soon after it was published, or soon after it was printed, but as to when it was sent out he had no recollection. He testified positively that he had not assisted Mr. Conway in any way in the preparation of this piece of literature, but that there was a possibility as to some of the literature that he may have changed the grammar, or the punctuation, or the rhetoric upon it; that he had seen the big red poster in the office of the Oregon Inland Development Company, and that he had read it and looked at the pictures; that if he went into the office and they had the literature out the officers of the company would show it to him and that he would look at it; that perhaps he would see the principal things in it and perhaps not, but that he probably did; that he knew that the literature entitled Grande Ronde District, Oregon (three big apples) carried his name upon it as secretary of the company, and that he also knew that some of the other advertising literature carried his name as such officer.

The witness testified that he supposed that the company owned lands in Baker County and knew that the literature of the company had been prepared for the purpose of inducing sales; that he also knew that the only contract which the company had for lands in Baker County was contract of date October 17, 1910, being Defendant's Exhibit E; that the witness had examined all of the abstracts of the Oregon Inland Development Company for it and of course knew that he had never passed on any abstract for any lands situated in any other county than Union County; that the witness never knew of the company ever having directly purchased any lands in either Baker or Wallowa Counties, and that it was his belief and understanding that all of the lands the company had bought and taken title to were confined strictly to Union County.

With reference to the first issue of the literature entitled "An Oregon farm for only $150," the witness testified that he could not recall this piece of literature, but that it might have been submitted to him; that he might have known that the piece of literature was being circulated; that he would not say absolutely whether he did or not; that if he had the facts had escaped his memory in the lapse of time.

Relative to the issue of "Success" the witness testified that it is quite probable that he saw this piece of literature after it was issued, but he does not know whether he read it or not; he would not say that he had not read it; that it would be a difficult matter for the company to be sending out literature in large quantities over so long

a period of time without some knowledge of it coming to the attention of the witness, and that when it did come to his attention it is quite probable that he would read it, although he would not say positively because he could not remember.

The witness denied any knowledge of the circumstances testified to by the witness Ella O'Gara as to the change of the name upon the second issue of "Success" from Jay Upton to J. T. Conway.

Questioned as to how many copies of the issue of "Success" that he had ever seen in the office of the Oregon Inland Development Company, the witness testified that he could not swear positively that he had ever seen a copy of it until he was on the stand at the previous trial of Conway and Richet. As to the question as to whether or not he knew that between March, 1910, and September, 1910, approximately 5,000 copies of the issue of "Success" was being distributed through the mails he testified that although he signed most of the checks of the Oregon Inland Development Company he would not say positively whether or not he knew that this piece of literature was going to the public in those quantities; that he would of course presume when the checks were presented to him in payment of bills to printing concerns that it was for some kind of advertising literature, but that he had nothing to do with examining the literature or even with examining the name of any of the publications or as to whether or not the bill was correct.

The attention of the witness was directed to page 5 of the issue entitled "Success," and the following statement from the literature was read to him:

> "Our lands comprise many sections of choice lands, level and free from timber growth; these lands are ready for the plow, but many sections have small patches of timber upon them, yellow pine, fir and tamarack. The open land is covered in summer with a thick growth of wild hay of high and nutritive value for fodder. Stock thrive upon it. The land is also fruit land of the highest quality. This has been proved by the early home seekers who settled in these vicinities years ago. These people set out young trees and today have bearing orchards which cannot be excelled in the famous fruit regions anywhere in the United States."

The witness testified that if he had read that statement he would have had every reason to believe it to be true; that he did not know what land it related to but that his knowledge of the lands came from the people who prepared the advertising literature; that he knew these people and believed the representations to be true, if, in fact, he read them; that if he had read the statement prior to October 1, 1910, he would have believed that the lands were ready for the plow and that John Veasen, the owner of the lands, had told him so. John Veasen, the witness testified, is now dead.

The witness further testified that Veasen had not told him how many acres of the land were ready for the plow

and that he would not swear that Veasen had ever said that any of them were ready for the plow.

Since the publication of the literature the witness testified that he had learned that the Veasen lands were the same lands as the Jones-Mays lands; that at the time the company started out he did not know that these lands comprised lands all located in school sections 16 and 36. Concerning this, the witness testified as follows:

"Q. Did you know that these lands comprised thirty-five or forty thousand acres all located in school districts 16 and 36?

A. I didn't know it at the time they started out; I learned it later on.

Q. How long afterwards did you learn that these were all school lands?

A. I can't say; I can't pick up details like that and carry them all in my mind all these years, but I know it was sometime afterwards.

Q. Sometime during the summer of 1910?

A. I would say so, yes, but just when, or where, I won't put my finger down on any day or time or within several weeks of any particular time, attempted to be testified about.

Q. Of course, if you had known they were Jones-Mays land you would have known they were worthless?

A. No, I wouldn't have known it entirely; but would have reason to suspect many of them were worthless.

Q. And a great majority of them on top of

mountain peaks if known they were the Jones-Mays lands?

A. I won't say on the top of mountain peaks, but I would have known or had a good deal of reason to suspect that a large area of that were in mountain regions.

Q. And you knew during the summer of 1910 then, two things; that these tracts of 35,000 acres of land were in sections 16 and 36, and second, that a large quantity consisting of thousands of acres of lands located in sections 16 and 36 were also the Mays-Jones lands, didn't you?

A. Well, I won't say when that information came to me, but it did at some time, but I won't fix any specific time for it.

Q. You always knew, ever since you started in to practice law, that sections 16 and 36 were school sections?

A. Certainly.

Q. You knew in the summer of 1910, and for several years prior thereto, that the Jones-Mays land comprised thousands of acres of sections 16 and 36?

A. Well, as far as my general information went, that the Jones-Mays lands were sections 16 and 36, because they were acquired from the state; that was a matter of public notoriety around here.

Q. Everybody knew that?

A. Everybody knew, and happening to know both Jones, and knowing Mays very well, having

read law in his office, of course I knew something about it."

The witness further testified that he had read law in the office of Mr. Jones in the year 1890 and the year 1891; that at that time he did not know that the Jones lands were located in sections 16 and 36; that he did know of this fact prior to 1910 on account of the land fraud trials conducted in Portland and a matter of general notoriety some years before that date; that the witness could not say positively when he first found out that the Veasen lands were the Jones-Mays lands, but that it was perhaps some time in the fall of 1910. The witness could not recall the circumstances under which he had made the discovery. The witness testified that he had never gone to a map of the state of Oregon for the purpose of examining it to see where any of the Veasen lands were located; that an accurate sectional map of the state would have shown all of these lands to have been located within high mountains providing the map was drawn to a scale; that, however, there were not many such maps of the state from which such an examination could be had; that the general land office maps would be too small for that purpose; that the witness had originally subscribed for six shares of the capital stock, and that he had made the entry noting that fact; that the stock remains upon the books of the company apparently in the name of the witnesses, but that in reality it was transferred to John Veasen. The witness could not state when, where or under what circumstances the transfer was made and said that after the transfer had been made he owned no stock in the cor-

poration, although he continued to act as a member of the board of directors.

The witness was shown an agent's contract of date March 4, 1911, signed by Richet and Riddell being Complainant's Exhibit 40, and testified that he executed the contract on behalf of the Oregon Inland Development Company, and that from the style of the language used and employed, the witness was of the opinion that he had prepared the contract; that he had never made any investigation of the representations that were made by the Oregon Inland Development Company for the purpose of inducing the sales of their auction contracts. That when the contract of date October 17, 1910, was entered into the witness did not know whether the company had on hand $500 or $5,000 or $10,000, and that he had no knowledge at all and would not attempt to state as to how much they had; that if he had given any thought to it at all he would have known at that time that all of the lands which the company had any interest in were described in the contract of date October 17, 1910, and that the only assets it had on hand was the cash on hand and the balance due upon their auction contracts, all of which of course were redeemable in land.

Whereupon the defendant rested.

Whereupon the government rested.

The statement of evidence contained in this bill of exceptions does not contain all the evidence which was introduced at the trial. But does contain all the evi-

dence relating to the mailing of complainant's Exhibit number 41, complainant's Exhibit number 42 and complainant's Exhibit number 119.

Whereupon, following the arguments of counsel, the court instructed the jury as follows:

"Gentlemen of the Jury:

You have sat here for almost two weeks listening patiently to the testimony in this case and to the argument of counsel. I now ask your attention while I state to you the issues you are to try and the rules of law by which you are to be governed in arriving at your verdict.

The defendant, H. H. Riddell, is on trial before this court and jury charged with a violation of section 215 of the Federal Penal Code, which, as far as material to our present purposes provides that 'Whoever having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place or caused to be placed any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any postoffice or station thereof, or street or other letter box of the United States or authorized depository for mail matter, to be sent or delivered by the post-office

establishment of the United States * * * shall upon conviction be punished as in the statute provided.

Now, the indictment in this case was returned upon the 23d day of May, 1914, and charges that the defendant Riddell together with J. T. Conway and Frank Richet, devised and conceived a scheme to defraud one Mrs. Patsy Doran and divers other persons to the Grand Jury unknown, and to obtain from them and each of them money and property by means of false, fraudulent and misleading pretenses, representations, advertisements and promises, and that in the execution of this alleged fraudulent scheme that the defendant Riddell mailed or caused to be mailed in the post office establishment of the United States at Portland, five certain letters which are set out in the indictment, and to which I shall call your attention more particularly hereafter.

Two matters of fact are therefore to be established by the evidence in this case: First, that the defendant Riddell either alone or in conjunction with one or both of the other persons named devised a scheme or artifice to defraud as set out in the indictment, and second, that in the execution of such scheme he deposited or caused to be deposited in the United States Post-office one or more of the letters set out in the indictment.

Now, the indictment in this case sets out with great particularity the nature and character of the

enterprise or scheme which the government claims and alleges to have been fraudulent. I do not think it necessary to take much time by referring to the several allegations in this indictment in detail; they have been referred to repeatedly throughout the trial. It is sufficient for present to say that in general the charge is that the parties named, that is Riddell, Conway and Richet, acting as officers of the Oregon Inland Development Company, falsely and fraudulently represented that such company owned, or had control of some forty thousand acres of land which it proposed to divide into 3086 farms or smaller tracts and offer for sale to intending purchasers at a certain sum to be paid down and certain monthly payments; that it was represented that this land belonged to the company, that it was fruit and agricultural land, that land adjoining the property of the company was all planted in orchard, and many other statements and representations are set out in the indictment as having been made by the defendants either through their correspondence or literature or publications issued by them, and the indictment contains a reference to the names of the publications which it is alleged the officers of this corporation caused to be sent out through the United States mails in large numbers to different parts of this country, and these publications are referred to with great particularity in the indictment, and your attention has been called to them at the trial, such as 'The Grand Ronde District of Oregon' the Native Hay Scene, with certain pictures

and representations thereon, with statements under the pictures indicating the property which they represent. All these matters are set out in detail.

Now this indictment alleges that in the execution of this alleged fraudulent scheme the defendant Riddell mailed or caused to be mailed, as stated a moment ago, five certain letters. The first one stated in the indictment is dated July 12, 1911, and addressed to one A. H. Brobst at Vancouver, Washington; the second is dated Portland, Oregon, February 16, 1912, and addressed to Mrs. F. O. Wesson, City. So far as these two letters are concerned, the government has offered no evidence tending to show that they were mailed by the defendant or caused to be mailed by him, and therefore you are to disregard them in your deliberations. Of the other three letters, one was dated the 26th day of June, 1911, addressed to W. C. Hayward, Manila, Iowa. The other two that it is alleged were sent through the mails are what have been referred to and denominated throughout the trial as clearance receipts, one of date June 9, 1911, in favor of E. H. Bryant of Gallup, New Mexico, and the other dated May 29, 1911, in favor of J. K. Hartline of Albuquerque, New Mexico.

Now, I shall not attempt to review the testimony or allude to it in detail, although I am privileged to do so, I prefer to submit the matter to you unembarrassed by any review or suggestions of mine as to the weight of character of the testimony. You

have heard all this testimony, heard the letters read, heard the circulars read, heard the explanations of the parties in reference thereto, and you are, I take it, in a better position to pass upon the facts and understand the testimony and its purport and effect than I am. I shall therefore not endeavor to guide you in any way in that direction.

Now, it is important at the outset that you should understand in what way the purpose or intent to defraud enters into a prosecution of this character. This court does not have jurisdiction and cannot try a criminal charge ordinarily known as obtaining money by false pretenses. That matter, if it is a crime at all, comes within the jurisdiction of the common law offenses and must be tried in another tribunal. It is, however, involved in the inquiry here because the government of the United States has absolute control of its mails and may provide what matter shall or shall not be carried therein, or what the mails may or may not be used for, and Congress has provided that the mails shall not be used in the execution of a scheme to defraud or a scheme or device to obtain property or money by means of false representations, and it is the duty of this court and jury to enforce this statute when it is shown that it has been violated. It therefore does become important in this case for you to inquire into the nature and character of the enterprise or business in which the Oregon Inland Development Company was engaged and the defendant Riddell's connection therewith, and for that purpose

it is your duty, under the testimony, to determine whether the enterprise was, at the time the letters set out in the indictment were mailed, if they were mailed at all, in fact a scheme to defraud, and if so whether the defendant Riddell was a party thereto.

It is essential to a conviction in this case that it appear first that there was a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent representations as alleged in the indictment; second, that the defendant Riddell was a party thereto, and third, that in the execution of such scheme he mailed or caused to be mailed one or more of the three letters or documents set out in the indictment, and which I have heretofore called to your attention.

Now, to devise, within the meaning of this statute, means to prepare a scheme, to lay a plan, to contrive. A scheme is a design or plan formed to accomplish some purpose. An artifice is an ingenious contrivance or device of some kind, and the term as used in this statute is equivalent to trick or fraud. To defraud implies or includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence generally imposed and are injurious to another, or by which an undue and unconscionable advantage is taken of another. It means to wrongfully deprive one of something which he already has. Fraudulent pretenses, representations or promises within the statute mean such fraudulent suggestions or representations of an existing or past fact, or promise as to the future

by one who knows it not to be true as are adapted to induce the person to whom they are made to part with something of value.

The burden devolves upon the government in this case to establish to your satisfaction beyond a reasonable doubt that the defendant Riddell, either on his own behalf or with the assistance of Conway and Richet or one of them devised the scheme or artifice to defraud or obtain money or property by means of false or fraudulent pretenses, representations or promises, and he cannot be convicted on mere proof that Conway and Richet devised such fraudulent scheme, if they did so, and that the defendant knew of their conduct and failed to protest against it. If he is to be convicted the government must satisfy you beyond a reasonable doubt that he was himself a party to the scheme or artifice described in the indictment, and even if you should find that Conway and Richet devised a scheme or artifice to defraud, or to secure money or property by false or fraudulent pretenses, representations and promises and that the defendant co-operated with them in the acts and proceedings had for the purpose of consummating the fraud, he still would not be liable criminally unless he knew that the scheme or enterprise was fraudulent and consciously participated therein, knowing it to be such. However wide of the mark the representations of Conway and Richet may have been, the defendant cannot be charged with criminal responsibility for them unless he acted in bad faith, and the burden of prov-

ing that he so acted devolves upon the government. The crime with which the defendant is charged consists of two elements; there must, in the first place, be a scheme or artifice to defraud or obtain money or property by means of false and fraudulent pretenses, representations or promises. And there must be in the second place, a mailing of one or more letters or documents referred to in the indictment.

The burden devolves upon the government to show you beyond a reasonable doubt that the defendant was a party to such fraudulent scheme or artifice, and also that he mailed or caused to be mailed one or more of the letters or circulars set out in the indictment. The government is confined in its proof to the allegations set out in its indictment. It cannot claim a conviction by proving any other scheme or artifice than that alleged, nor prove mailing by the defendant of any other letter, pamphlet, circular or writing than those alleged in the several counts of the indictment.

Now, the questions whether the enterprise in which the Oregon Inland Development Company was engaged was a scheme to defraud, or whether, if it was, Riddell was a party thereto, or whether he mailed or caused the letters set out in the indictment to be mailed, if they were mailed at all, are questions of fact to be determined by you, and whatever the court may say about the testimony, or whatever it may have said, if anything, throughout

the progress of the trial is not to be accepted by you as correct unless it conforms to your own judgment, and if at any time the court has indicated or intimated its views on any question of fact or the credibility of any witness, you should disregard it unless it coincides with your own views from the testimony in the case. All questions of fact are for your determination and not the court's. It is the duty of the court to advise you as to the law, and it is your duty to follow this advice, but it is peculiarly your province and duty to find the facts. It is therefore a question of fact for you to determine from all the testimony in the case whether there was in fact a scheme or artifice to defraud or to obtain money by means of false and fraudulent representations and promises, and if there was such a scheme and it continued and was in existence within three years prior to the finding of this indictment, and the mails of the United States were used, as alleged in the indictment in execution of the scheme, there was a violation of the federal statute, and if the defendant Riddell was a party to such artifice or scheme or aided or assisted in its accomplishment, with knowledge of its fraudulent character, then he would be guilty and it would be your duty to so find.

The statute under which this indictment was framed includes every device, artifice or design to defraud by means of false representations, either as to the present or the future. It is intended to protect the public against intentional efforts to wrong

and despoil, and especially to prevent the post office of the United States from being used for that purpose. So that if there was a fraudulent scheme or device entered into by Richet or Conway or either of them for the purpose of obtaining money or property by false or fraudulent representations and Riddell was a party thereto with knowledge of its fraudulent character, then under the statute he was guilty as a principal if the mails were subsequently used, as charged in the indictment and in the furtherance of such purpose.

Now, gentlemen, there is no hard and fast rule by which a jury is to determine whether there was, in a given case, an unlawful or illegal scheme to defraud. Men do not usually deliberately place their intentions in writing when they enter into an illegal device or scheme of any kind, and the best that courts and juries can do when called upon to consider the matter is to determine from the facts and circumstances in the case, from the conduct of the parties, their association together, what they did, what acts they performed, what acts each performed, and from all these determine whether there was in fact such a scheme or artifice or not. And if you can reconcile the testimony in this case upon the hypothesis of the defendant's innocence it is your duty to do so.

Again where two or more persons agree or confederate together to commit an unlawful or illegal act, and where there are several acts together con-

stituting but one crime, each is responsible for the act of the other in furtherance of their common purpose, even though it may be performed in his absence and without his knowledge. If, therefore, you believe from the testimony in this case that there was an illegal, unlawful device or scheme to defraud by means of false and fraudulent representations set out in the indictment, entered into between the defendant and Conway and Richet, or either of them, and that such scheme contemplated the use of the United States mails in its accomplishment, then it can make no difference, as far as the defendant's guilt is concerned, which one of the co-conspirators mailed the letters charged in the in-indictment if they were mailed at all, or whether he knew that they were mailed or whether he had any knowledge of the contents thereof, if in fact they were mailed by one of the conspirators or associates in furtherance of the unlawful scheme or device to defraud, to which the defendant Riddell was a party, and of which he had knowledge.

Now, as I have said to you there are five communications set out in the indictment and which it is alleged the defendant mailed or caused to be mailed. As to two of these there is no proof, and the testimony in relation to the other three you have heard, and it is for you to determine whether they were mailed in pursuance of the alleged unlawful scheme and in execution thereof. A letter, to come within this statute, must be deposited in the post-office for the purpose of executing the scheme or

artifice to defraud or in attempting to do so, but it is not necessary that the letters or papers mailed be of a nature or character to be effective in carrying out the fraudulent scheme or device. It is enough if, having devised the scheme to defraud, the defendant with a view of executing it deposited or caused to be deposited in the post-office letters or papers which were designed for the purpose of executing the scheme, or to assist in carrying it into effect, although in the judgment of the jury they may be wholly insufficient for that purpose. Nor is it necessary for the government to prove the mailing of all of the three letters set out in the indictment and to which I have called your attention. It is sufficient if it has satisfied you that one or more of such letters was either mailed by the defendant or caused to be mailed by him, and that such letter or document was in fact intended by the parties mailing it in execution or to assist in the execution of the alleged unlawful scheme.

Now, it is important that you should keep in mind, gentlemen, that the defendant is not being tried for defrauding either of the parties who are named in the indictment or any other person, or for promoting or assisting in the promotion of an impracticable scheme or plan. The question is, did he alone or in conjunction with Conway and Richet, or either of them, devise a scheme or artifice to defraud, and having devised such scheme, did it continue down to and within three years prior to the finding of the indictment in this case, and did he or

one of his co-conspirators place or cause to be placed in the United States mail or any station thereof for mailing and delivery one or more of the letters described in the indictment, for the purpose of executing or attempting to execute such scheme? You must, therefore, before you can find the defendant guilty, be satisfied beyond a reasonable doubt, as I shall attempt to define that term to you hereafter, that he devised or assisted in devising such scheme to defraud, and that he or his co-conspirators placed or caused to be placed in the post-office of the United States for mailing and delivery one or more of the three letters or documents mentioned in the indictment, and to which I have called your special attention, for the purpose of executing such scheme. The intention of the defendant is the gist of the offense. That is to say, it must appear to your satisfaction beyond a reasonable doubt that he intended to defraud, and in determining that question you should consider the testimony showing his connection with this corporation, his relation to it, the statements and representations if any that were made to him by the officers and agents and promoters of the concern, and the motive or want of motive that may have induced him to engage or not engage in such enterprise.

Now, in order for you to find that the defendant was a party to the scheme or artifice to defraud, if such there was, it is of course not necessary that you should be satisfied or that you should believe

that he himself conceived the idea, if he knew the things that Conway and Richet were doing in sending out the literature of the company, that this literature carried his name as secretary of the company, and that the lands or property of the concern were being pictured in the literature as belonging to the company when in truth and in fact he knew that it did not own such property, and if you further find that he knew these representations were being made for the purpose of inducing the public to invest its money in the land of the Oregon Inland Development Company, then you should take these things into consideration, together with all the other evidence in the case, for the purpose of ascertaining and determining whether or not the defendant was himself a party to the fraudulent scheme. It is not enough to justify conviction that the evidence will satisfy you that the parties in charge of the Oregon Inland Development Company and its business exaggerated the character or quantity of land which they had for sale. You must be satisfied beyond a reasonable doubt that they exaggerated or misrepresented the quality or quantity of the land with intent to defraud the persons to whom they sold contracts. The law presumes that every man intends the natural and probable consequences of his own unlawful acts. Wrongful or unlawful acts when knowingly or intentionally committed cannot be justified nor excused on the ground of innocent intent. An intent to injure or defraud is presumed when an unlawful act which

results in loss or injury is proved to have been knowingly committed. If, therefore, you find from the evidence and beyond a reasonable doubt that there was a scheme and artifice to defraud substantially as set out in the indictment and that the defendant Riddell was a party thereto, that the representations contained in the literature of the company were made with his knowledge, and that these representations were known by him to be false, then the intent to injure and to defraud the auction contract holders of the Oregon Inland Development Company on the part of Riddell may be by you presumed. Acts which involve such consequences when knowingly and wrongfully committed establish not only a guilty intent to injure and defraud but they disclose moral turpitude utterly inconsistent with an innocent intent. It is presumed that every sane person intends the natural and ordinary consequence of his own voluntary act. Applying this rule to the case at bar if you should find from the evidence and beyond a reasonable doubt that the defendant was a party to the scheme and artifice to defraud set out in the indictment, if you should find that there was such a scheme or artifice, and that in the execution of said scheme or attempting so to do, he mailed or caused to be mailed the letter set forth in count three of the indictment, and the circulars set out in counts four and five of the indictment, then he would have violated the statute and your verdict should be accordingly.

Now, evidence has been introduced that the officers and representatives of the Oregon Inland Development Company put into circulation pamphlets and publications containing pictures or photographs, or purporting to contain pictures or photographs or that were represented to have been taken of lands owned by the company, when, as a matter of fact, they were taken of other land which the company did not own. If this is true and you find that it was done deliberately and with a settled purpose and intent to deceive, then it is a circumstance indicating or tending to indicate the character of the enterprise in which the parties putting out such literature were engaged. If you should find, however, that the pictures were intended and understood by the parties as representative or typical of lands owned by the company or which they honestly intended to and could acquire, then the mere fact of the publication and circulation of such pictures would not be sufficient of itself to justify finding that the scheme was fraudulent. The character and weight to be given to these pictures and photographs depends entirely upon the purpose and intent, as you view it from the testimony, operating upon the minds of the parties responsible there or at the time they were printed and circulated. If it was an honest, bona fide attempt to advertise their property or the community in which it was located with no intent to misrepresent for the purpose of misleading and defrauding then it would not come within the statute, but if it was

not, then it would be a circumstance and a strong one for you to consider in determining the nature and character of the enterprise in which these gentlemen were engaged. Mere exaggeration of the quality or character of any article which one has for sale is not necessarily a fraudulent misrepresentation and within any proper reasonable bounds such a practice is not criminal. It is a well-known fact that parties who have anything to sell sometimes have the habit of puffing their wares, and we are all familiar with the fact that it is a very prevalent thing in the course of business to exaggerate the merits of goods or property to be sold, and as I said within any proper reasonable bounds such a practice is not criminal, however reprehensible it may be. In order to be criminal and to come within this statute now in question it must amount to more substantial deception. A certain degree of praise and commendation of one's business and goods is allowed and it is not criminal to indulge in such praise and commendation even to a reasonable degree of exaggeration. But when it is carried to the extent of misrepresenting the facts for the purpose of obtaining the public's money by means of fraudulent representations then it comes under the ban of the statute.

Now, gentlemen, the evidence in this case indicates that the Oregon Inland Development Company at its inception was organized for the purpose of exploiting what have been referred to throughout the trial as the Veason lands. It appears that the

company owned no other land and had no contracts for the purchase of lands other than the Veason lands. It also appears in the testimony, undisputed, that in the fall of 1910 they ceased the exploiting of the Veason lands and transferred their activities to counties in Eastern Oregon and principally to Union County. It therefore appears that all the transactions had by the company and its officers concerning the Veason lands were more than three years prior to the finding of the indictment in this case, and the statute provides that prosecutions of this character shall be begun within three years after the crime has been committed, so that you could not, under any view that you might take of this testimony find the defendant guilty because of his connection with the corporation during the time that it was exploiting the Veason lands, not only because such transactions are barred by the statute of limitations but because the indictment does not allege nor charge that during that time the mails of the United States were used in the execution of the alleged fraudulent scheme. The evidence concerning the organization of this corporation and its transactions during the time that it was exploiting the Veason lands has been admitted and is to be considered by you in order that you may ascertain and determine the nature and character of the business in which these people were engaged and whether or not it was a fraudulent scheme, but even if you should believe that up to the time the parties began operating in Eastern Oregon the scheme was

fraudulent and a violation of the statute, it would not justify you in convicting the defendant unless you should believe further that after the company began operating in Eastern Oregon it continued to maintain and operate as a fraudulent scheme and with intent to defraud the parties with whom it thereafter contracted. The acts set up in the indictment are charged as having been done on a certain date stated therein. The government is not confined in its proof to the dates set forth in the indictment, but it is bound, under the statute of limitations, to prove that the acts of the defendant on which a conviction is asked took place within three years prior to the finding of the indictment. Unless, therefore, you can find from the evidence beyond a reasonable doubt that subsequent to the 23rd day of May, 1911, there was a fraudulent scheme and device, as set out in the indictment, and that the defendant was a party thereto, and that subsequent to that date he mailed or caused to be mailed one or more of the writings heretofore specified in the charge of the court, you must necessarily find him not guilty.

Your inquiry therefore will be largely confined to a consideration of the nature and character of the business in which these people were engaged while they were exploiting the Union County lands, but in determining such nature and character, you have a right, as I suggested a moment ago, to consider the entire transaction, the circumstances under which the corporation was organized, the pur-

pose for which it was organized, how it was organized, how it was conducted, and from that determine whether they were carrying on an unlawful scheme to defraud in exploiting the Union County land, and within three years prior to the finding of this indictment.

Now, the defendant in this case has entered a plea of not guilty. That plea is a denial of every material allegation in the indictment and of every essential element necessary to constitute the crime charged, and imposes upon the government the duty of proving its allegations and these elements to your satisfaction beyond a reasonable doubt before you can find a verdict of guilty. In other words, the burden is not on the defendant to prove himself innocent, but it is on the government to prove him guilty and that beyond a reasonable doubt, and if you can reconcile the testimony in this case consistent with his innocence, then it is your duty under your oaths to do so. On the other hand if you cannot and you believe beyond a reasonable doubt that he is guilty of the crime charged, then of course your duty is plain to find a verdict in accordance therewith.

He comes before you clothed with the presumption of innocence and he is entitled to the benefit of this presumption throughout the trial and until it is overcome by the testimony. It is not sufficient for the government to create in your minds a suspicion or even a belief that the defendant is guilty

of the things charged against him in the indictment. He is presumed innocent until his guilt is established beyond a reasonable doubt. And when I have said at any time throughout this trial that any fact must be established, I have meant always that it must be beyond what is denominated a reasonable doubt. Now this is a term often used, always used in criminal cases. Its meaning is quite well understood and yet it is difficult to define. It does not, gentlemen, mean a mere possible doubt. It does not mean a captious doubt, nor such a doubt as one might conjure up in his own mind based upon the statements of counsel, or his sympathy in the case, or matters of that kind, but it means such a condition of the mind as would make a reasonably prudent man hesitate to act in his own most grave and important affairs. It is a substantial doubt, based either upon the testimony or want of testimony. And if, after you have considered all the testimony in this case, you are not able to say that you have an abiding conviction to a moral certainty that the defendant is guilty of the crime charged, it is your duty to give him the benefit of that doubt and acquit. If, on the other hand, you are so satisfied, then it is your duty to find in accordance with your conviction.

You are also, gentlemen, the exclusive judges of the credibility of the witnesses. Every witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which a witness testified, by his appearance on the witness

stand, by contradictory evidence, or by evidence that he has made statements out of court inconsistent with his present testimony, and in this connection I desire to call your attention particularly to the testimony of the witness Conway. You will recall he testified to certain matters while under oath before you. It was shown by the government that upon a previous trial he had testified, while under oath, to the contrary. Now, this evidence of his former testimony was admitted solely for the purpose of impeaching and discrediting him as a witness in this case and is material only as bearing on the credit to be given his testimony here. What he testified to at the former trial is not proof against the defendant in this case of the statements made by Conway on the stand at that trial. It is only admitted for the purpose of discrediting his testimony, or placing you in a position where you can properly judge of the weight to be given to his testimony here and upon the present trial.

Now, the defendant has testified as a witness on his own behalf. You should apply to his testimony the same rules and tests that you apply to the testimony of each and every other witness that testified in the case, apply to it the same standard, and give it such faith and credibility as you think it is entitled to, keeping in mind the interest that he has in the result of the trial and the probable effect, if any, such interest may have in influencing his testimony.

A number of reputable witnesses have testified that for many years last past the reputation of the defendant for honesty and integrity in the community in which he has resided has been good. This testimony is evidence in his favor and is before you for your consideration in connection with all the other evidence in the case. In all cases in which a person accused of a crime involving dishonesty and want of integrity is on trial, his good reputation for honesty and integrity is properly to be submitted to the jury. The purpose of such testimony is to enable the jury to determine the degree of improbability that a person on trial who possesses such a reputation would have committed such a crime. What weight is to be given to the testimony rests solely with you. Circumstances may be such that an established reputation for honesty and integrity on the part of the defendant would create a reasonable doubt as to his guilt although without such reputation, the evidence in such case would be convincing and justify a verdict of guilty. In another case, however, the circumstances and proof may be such as would require a verdict of guilty notwithstanding an established reputation for integrity on the part of the accused. It does not necessarily follow from the fact that a man has a good reputation for honesty and integrity that he actually possesses these traits of character and the mere possession of such reputation does not render the person possessing it incapable of committing a crime involving dishonesty and want of integrity. It is

within the common knowledge of all of us that many persons bearing good reputations have nevertheless been guilty of crime. While the reputation of the defendant for honesty and integrity is for your consideration as part of the evidence in the case it is entitled to just the weight, no less and no more, which you upon a review of all of the evidence in the case, and the exercise of a sound judgment, would attach to it, and you should give it such weight as you think it is entitled to under all the circumstances of this case.

Now, gentlemen, the defendant is entitled to the opinion and judgment of each individual juror, and as long as any member of the jury entertains a reasonable doubt of his guilt it is duty to vote for an acquittal. I do not mean by this, however, that you should be arbitrary or unyielding because you must compromise your differences as best you can and as far as you can consistent with your oath, but if, after you have carefully considered all the testimony, exchanged views among yourselves, any juror conscientiously entertains a reasonable doubt as to the guilt of the defendant, he is entitled to the benefit of that doubt. Your verdict, whatever you arrive at, must necessarily be unanimous.

Now, gentlemen, I would say in conclusion that the post-office establishment of the United States is a public agency created and maintained by the government at public expense for the convenience of all the people. It is important that this agency

should not be used for the purpose of promoting fraud, and Congress has passed a law prohibiting such misuse of the mails, and it is the duty of courts and juries to enforce these laws whenever and wherever violated, and if you are satisfied from the testimony in this case beyond a reasonable doubt that the defendant has violated the law in the manner and form as charged in the indictment, you should so find in your verdict. On the other hand, if you entertain a reasonable doubt, your duty to acquit is equally plain and mandatory. The government is insistent upon obedience to its laws but does not demand conviction of innocent parties. It asks equal and exact justice at your hands and nothing more, justice for itself and justice for the citizen accused of violating its laws.

MR. McCAMANT: There was one matter as to which I requested no instructions, your Honor, but I think I am entitled to have the Court tell the jury that if a witness shall be found to have testified falsely in any one respect, he or she should be looked upon with distrust as to the remainder of his or her testimony.

COURT: It is a rule, gentlemen, that where a witness is believed by a jury to have testified falsely in one respect or upon one particular matter, the remainder of the testimony is to be viewed by the jury with caution.

MR. McCAMANT: Is this the proper time to take exceptions?

COURT: Yes, you have to take them now.

MR. McCAMANT. I desire to except to the refusal of the court to give each request which I handed up, which was not given, and I except also to the giving of the second, third and fourth requested instruction of the government.

I also except to so much of the charge of the court, if I understood the charge correctly, as held that the defendant might be convicted if the jury should find that there had been a scheme or artifice to defraud to which the defendant had at some time been a party and the scheme continued until within three years of the finding of the indictment, even though the defendant had done nothing within three years to carry into effect the purpose of the scheme or artifice.

COURT: I did not intend to say to the jury that it would necessarily follow that if there was a scheme to defraud conceived and formed more than three years prior to the finding of the indictment, to which the defendant was a party, and that the scheme continued and was in existence within three years, that he would be guilty unless it appeared that he continued to be a party to the scheme.

MR. McCAMANT: I see I misunderstood, Your Honor, and I am not entitled to an exception on that instruction.

I also ask an exception, may it please the court, to so much of the charge that held that if the jury should believe that there was a scheme to defraud and the defendant was a party to it, it would make no difference whether the matter mailed was mailed by the defendant or by some one else, and I except further to so much of the charge as held that the defendant's knowledge or ignorance of the mailing would cut no figure under those circumstances, and—

COURT: That is if there was a conspiracy between him and one other.

MR. McCAMANT: Yes, I understand the contingency under which the Court so instructed the jury. I think the refusal of certain requests of my own covers what I have to say."

Within the time limited by the rule of the court so to do, the defendant requested in writing that the court give the following instruction to the jury:

The jury is instructed to find the defendant not guilty of the charge set forth in count three of the indictment.

The court refused to give this instruction to the jury and before the jury retired the defendant asked and was allowed an exception to the refusal.

Within the time limited by the rule of the court so to do, the defendant requested in writing that the court give the following instruction to the jury:

> The jury is instructed to find the defendant not guilty of the charge set forth in count four of the indictment.

The court refused to give this instruction to the jury and before the jury returned the defendant asked and was allowed an exception to the refusal.

Within the time limited by the rule of the court so to do, the defendant requested in writing that the court give the following instruction to the jury:

> The jury is instructed to find the defendant not guilty of the charge set forth in count five of the indictment.

The court refused to give this instruction to the jury, and before the jury retired the defendant asked and was allowed an exception to the refusal.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The burden devolves upon the Government in this case to establish beyond a reasonable doubt that the defendant, either on his own behalf, or with the assistance of J. T. Conway and Frank Richet, or either of them, devised a scheme or artifice to defraud or obtain money or property by means of false or fraudulent pretenses, representations, or promises. On this branch of the case the jury is instructed that the defendant cannot be convicted on mere proof that Conway and Richet devised such

a fraudulent scheme or artifice and that the defendant knew of their conduct and failed to protest against it. If the defendant is to be convicted the Government must satisfy you beyond a reasonable doubt that the defendant was himself a party to the scheme or artifice described in the indictment and that he caused certain things to be done for the purpose of consummating the fraud.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

Even if the jury shall find that J. T. Conway and Frank Richet devised a scheme or artifice to defraud or to secure money or property by false or fraudulent pretenses, representations, and promises and that the defendant co-operated with them in the acts and proceedings had for the purpose of consummating the fraud, the defendant would still not be liable unless he knew that the operations of Conway and Richet were fraudulent and that the representations held out by them were untrue. However wide of the mark these representations may have been the defendant canot be charged with criminal responsibility for them unless he acted in bad faith and the burden of proving that he acted in bad faith devolves upon the Government.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The crime with which the defendant is charged consists of two elements. There must in the first place be a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, and there must in the second place be a mailing of a letter, circular, pamphlet, or other writing by United States mail. The burden devolves upon the Government to show the jury beyond a reasonable doubt that the defendant was a party to such fraudulent scheme or artifice and also that the defendant mailed, or caused to be mailed, some letter, circular, pamphlet, or other writing. The Government must be confined in its proof to the allegations of the indictment. It cannot convict defendant by proving any other scheme or artifice than that alleged in the indictment, nor by proving the mailing by the defendant of any other letter, pamphlet, circular, or writing than that alleged in the several counts of the indictment.

Except as the same may be incorporated in the general charge the court refused to give said instruction

to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The jury is instructed that the evidence introduced by the Government on rebuttal as to the testimony given by the witness J. T. Conway on the previous trial is material only as bearing on the credit to be given Mr. Conway's testimony in this case. The testimony given by Mr. Conway in the previous trial is not proof against the defendant in this case of the statements made by Mr. Conway on the stand in that trial.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> There is no charge in the indictment that a fraud was committed in the manner in which the stock of the Oregon Inland Development Company was treated as paid up. The jury will therefore disregard the contention of the district attorney that this circumstance was fraudulent.

Except as the same may be incorporated in the general charge the court refused to give said instruction

to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The jury is instructed that the defendant cannot be found guilty under the third count in the indictment unless the jury shall find that the defendant mailed, or caused to be mailed, a certain letter of date June 26th, 1911, signed Oregon Inland Development Company, J. T. Conway, Vice-President and General Manager, addressed to W. C. Hayward, Manila, Iowa, which letter is set forth in the third count of the indictment.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The jury is instructed that the defendant cannot be found guilty under the fourth count in the indictment unless the jury shall find that the defendant mailed, or caused to be mailed, a certain certificate dated June 9th, 1911, in favor of E. H. Bryant of Gallup, New Mexico, which certificate is set forth in the fourth count of the indictment.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The jury is instructed that the defendant cannot be found guilty under the fifth count in the indictment unless the jury shall find that the defendant mailed, or caused to be mailed, a certain certificate of date May 29th, 1911, in favor of J. K. Hartline of Albuquerque, New Mexico, which certificate is set forth in the fifth count of the indictment.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> It appears from the Government's proof that prior to May 23rd, 1911, the Oregon Inland Development Company ceased and abandoned its efforts to market the property which has been known in the testimony as the Veason Lands, and that all acts looking to the marketing of these properties had ceased more than three years prior to the time when the defendant was indicted. The jury is therefore

instructed to disregard all testimony, if there is any in the record, tending to show any efforts and things done by the defendant looking to the sale of the Veason lands.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

It appears from the testimony of the Government that all efforts looking to the marketing of the Veason lands were abandoned prior to the 23rd day of May, 1911. The jury is therefore instructed that a verdict of guilty cannot be based on evidence of anything done by the defendant looking to the marketing of the Veason lands.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

The acts set up in the indictment are charged in the indictment as having been done on certain dates therein set forth. The Government is not

confined in its proof to the dates set forth in the indictment, but it is bound under the statute of limitations to prove that the acts of the defendant on which a conviction is asked took place within three years prior to the finding of the indictment. Unless you can find from the evidence beyond a reasonable doubt that subsequent to the 23rd day of May, 1911, the defendant was a party to the fraudulent scheme and device set up in the indictment and that subsequent to that date he took some active step to effectuate the fraud therein charged, and that he mailed one or more of the writings heretofore specified in the charge of the court subsequent to May 23rd, 1911, you will find the defendant not guilty.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

It is not sufficient for the Government to create in the minds of the jury a suspicion or even a belief that the defendant is guilty of the things charged against him in the indictment. A defendant is presumed to be not guilty until the Government has proved beyond a reasonable doubt that he is guilty and the Government must satisfy the jury beyond a reasonable doubt that the defendant is

guilty of each of the things necessary to make out the offense as heretofore indicated in this charge.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> It is by no means unusual for advertisers to exaggerate the merits of those things which they offer for sale and such exaggeration is not criminal unless it is in bad faith. In order to be entitled to a conviction based on the literature circulated by the Oregon Inland Development Company, the Government must show that the defendant caused this literature to be circulated, knowing that the statements contained in it, or some of them, were false in fact, and that he did this with intent to deceive and to induce those receiving the literature to part with their money or property. The Government must further prove that such misrepresentations were material.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The future is always a matter of speculation and opinion. The representations therefore which are sufficient to sustain a charge of fraud must relate to something in the past or present. The jury is therefore instructed to disregard any statements in the literature of the Oregon Inland Development Company as to the future of the properties offered for sale or as to any future events affecting their value.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The value of land is always a matter of opinion and for that reason a statement as to the value of land cannot form the basis of a charge of fraud under the circumstances of this case.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> If the defendant believed the representations of the Oregon Inland Development Company with

reference to the value of its lands to be true, he is entitled to an acquittal.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

And within the same time the defendant in writing requested the court to give to the jury the following instruction:

> The jury has already been instructed that good faith is an adequate defense against the charge preferred in the indictment and on this branch of the case the jury is entitled to take into consideration the question of whether or not there was any motive moving the defendant to participate in the fraudulent scheme or artifice set forth in the indictment.

Except as the same may be incorporated in the general charge the court refused to give said instruction to the jury and did not give the same, and to this refusal the defendant asked and was allowed an exception.

It is further certified that the instructions set out herein as having been given by the court to the jury are all of the instructions given by the court to the jury. Before the jury retired the defendant was allowed by the court an exception to the action of the court in giving the following instruction to the jury:

> If, therefore, you believe from the testimony in this case that there was an unlawful and illegal device or scheme to defraud by means of false and

fraudulent representations set out in the indictment entered into between the defendant and Conway and Richet, or either of them, and that said scheme contemplated the use of the United States mails in its accomplishment, then it can make no difference as far as defendant's guilt is concerned which one of the conspirators mailed the letters charged in the indictment, if they were mailed at all, or whether he knew that they were mailed, or whether he had any knowledge of the contents thereof, if in fact they were mailed by one of the conspirators or associates in furtherance of the unlawful scheme or device to defraud to which defendant Riddell was a party and of which he had knowledge.

It is further certified that after the court had instructed the jury and before the jury had retired for deliberation the defendant excepted to the action of the court in giving to the jury the following instruction, which exception was allowed :

> It is enough if, having devised a scheme to defraud, the defendant, with a view to executing it, deposited or caused to be deposited in the postoffice letters or papers which were designed for the purpose of carrying it into effect, although in the judgment of the jury they may be wholly insufficient for that purpose; nor is it necessary for the government to prove the mailing of all of the letters set out in the indictment and to which I have called your attention. It is sufficient if it has satisfied you that one or more of such letters was mailed by the de-

fendant or caused to be mailed by him, and that such letter or document was in fact intended by the parties mailing it in execution of or to assist in the execution of the alleged unlawful scheme.

It is further certified that after the court had instructed the jury and before they retired for deliberation, the defendant excepted to the action of the court in giving to the jury the following instruction, which exception was allowed:

> You must, therefore, before you can find the defendant guilty, be satisfied beyond a reasonable doubt, as I shall attempt to define that term to you hereafter, that he devised or assisted to devise such scheme to defraud and that he or his co-conspirators placed or caused to be placed in the postoffice of the United States for mailing and delivery one or more of the three letters or documents mentioned in the indictment, and to which I have called your special attention for the purpose of executing such scheme. The intention of the defendant is the gist of the offense.

It is further certified that after the court had instructed the jury and before the jury had retired for deliberation, the defendant excepted to the action of the court in giving to the jury the following instruction, which exception was allowed:

> If there was a fraudulent scheme or device entered into by Richet or Conway or either of them for the purpose of obtaining money or property by false or fraudulent representations, and Riddell was

a party thereto, with knowledge of its fraudulent character, then under the statute he was guilty as a principal if the mails were subsequently used, as charged in the indictment, and in furtherance of such purpose.

It is further certified that after the court had instructed the jury and before the jury retired for deliberation, the defendant excepted to the action of the court in giving to the jury the following instruction, which exception was allowed:

It does not necessarily follow from the fact that a man has a good reputation for honesty and integrity that he actually possesses these traits of character, and the mere possession of such reputation does not render the person possessing it incapable of committing a crime involving dishonesty and want of integrity. It is within the common knowledge of us all that many persons bearing good reputations have nevertheless been guilty of crime. While the reputation of the defendant for honesty and integrity is for your consideration as a part of the evidence in this case, it is entitled to just the weight, no less and no more, which you, upon a review of all the evidence in the case, and in the exercise of sound judgment, would attach to it, and you should give it such weight as you think it is entitled to under all the circumstances of the case.

It is further certified that after the court had instructed the jury and before the jury retired for deliberation, the defendant excepted to the action of the court

in giving to the jury the following instruction, which exception was allowed:

> If you find from the evidence and beyond a reasonable doubt that there was a scheme and artifice to defraud substantially the same as it is set out in the indictment, and that the defendant, H. H. Riddell, was a party thereto, and that it was a part and portion of this scheme and artifice to defraud that the representations contains in the literature of the company were made with the knowledge of the defendant Riddell, and that these representations were knowingly false, then the intent to injure and to defraud the auction contract holders of the Oregon Inland Development Company, upon the part of the said Riddell, may be by you presumed; acts which involve such consequences when knowingly and wrongfully committed establish not only a guilty intent to injure and defraud, but they disclose moral turpitude utterly inconsistent with an innocent intent.

It is further certified that after the court had instructed the jury and before the jury retired for deliberation, the defendant excepted to the action of the court in giving the jury the following instruction, which exception was allowed:

> It is presumed that every sane person intends the natural and ordinary consequences of his own voluntary act. Applying this rule to the case at bar, if you should find from the evidence and beyond a reasonable doubt that the defendant was a party

to the scheme and artifice to defraud set out in the indictment, if you should find that there was such scheme or artifice, and that in the execution of said scheme or attempting so to do, he mailed or caused to be mailed the letter set forth in Count Three of the indictment, or the certificate set forth in Count Four of the indictment at the time and place designated in the indictment, then you should find the defendant, Riddell, guilty upon said counts.

It is further certified that when the jury retired to deliberate on their verdict, they took with them into the jury room all of the exhibits that were offered and received in evidence during the trial of the case.

And now, because the foregoing matters and things are not of record in this case, I, Robert S. Bean, the Judge who tried the above entitled cause in the above entitled court, do hereby certify that the foregoing bill of exceptions correctly states the proceedings had before me on the trial of said cause so far as they are herein set out, and contains all of the instructions of the court to the jury, and truly states the rulings of the court upon the questions of law presented, and the exceptions taken by the defendant appearing therein were duly taken and allowed; that said bill of exceptions was prepared and submitted within the time allowed by the order of the court and is now signed, sealed and settled as and for the bill of exceptions in said cause, and the same is hereby ordered to be made a part of the record in said cause.

It is further ordered that all of the original exhibits introduced in evidence in the trial of this cause and now in the custody of the clerk of the court be made a part of this bill of exceptions and filed therewith.

In witness whereof I have hereunto set my hand this the 19th day of September, 1916.

R. S. BEAN,
United States District Judge.

Filed September 19, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 9th day of October, 1916, there was duly filed in said court and cause, a Praecipe for Transcript, in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT.

To the Clerk of the above entitled Court:

You will please to print the record for the Circuit Court of Appeals in the above entitled cause:

Print the following:

Indictment (omitting Counts 2, 6 and 7).
Demurrer to indictment.
Order overruling demurrer.
Verdict of jury, including recommending leniency.
Bill of exceptions.
Writ of error, etc.
Assignments of error.

Bond.

Order enlarging time to file printed record in appellate court.

E. B. DUFUR,
Attorney for Defendant H. H. Riddell.

Filed October 9, 1916.

G. H. MARSH, Clerk.

And afterwards, to-wit, on Monday, the 16th day of October, 1916, the same being the 90th Judicial Day of the regular July, 1916, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

ORDER TO SEND ORIGINAL EXHIBITS TO COURT OF APPEALS.

It is ordered that the original exhibits introduced in the trial of the above entitled cause and made a part of the bill of exceptions be transmitted to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, with the printed record, and that the same be preserved for any use that may be required hereafter in this court.

CHAS. E. WOLVERTON.

Dated October 16, 1916.

Filed October 16, 1916.

G. H. MARSH, Clerk.

UNITED STATES OF AMERICA)
) ss.
District of Oregon)

I, G. H. MARSH, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing Writ of Error and in obedience thereto, do hereby certify that the foregoing printed transcript of record, in the case in said court of The United States of America, plaintiff and defendant in error, against H. H. Riddell, defendant and plaintiff in error, has been prepared by me in accordance with law and the rules of court, and in accordance with the direction of the praecipe for transcript filed in said cause by said plaintiffs in error, and that the said transcript is a full, true and correct transcript of the record and proceedings had in said Court in said cause, designated by the said praecipe to be included therein, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript is $.....for printing said record, and that the same has been paid by said plaintiffs in error.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this.....day of....., 1916.

.....

Clerk.